

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ANTIWAN E CURRY
609 STOKES DR
WATERLOO IA 50703

TYSON FRESH MEATS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08274-DWT
OC: 07/10/05 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's August 3, 2005 decision (reference 01) that concluded Antiwan E. Curry (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 30, 2005. The claimant participated in the hearing. Dave Duncan, the human resource manager for the Waterloo facility, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 26, 2004. The claimant worked as a full-time hourly employee. The claimant understood the employer did not allow employees to treat any of the animals inhumanely. The employer had zero tolerance for inhumane treatment of animals.

On July 12, 2005, the claimant's job required him to move hogs. The claimant understood he could swing a bat at the hog to get hogs to move as long as he did not hit the hogs. The claimant sometimes used a prod on the hog's hip area to get a hog up that was sitting on the floor so the hog would continue to move. The claimant understood the employer allowed employees to use these techniques. The claimant knew that if an employee hit a hog in the head, the employer considered this inhumane treatment and violated the employer's policy.

On July 12, a quality assurance employee reported seeing the claimant hit six hogs in the head while he moved hogs. The quality assurance employee indicated he told the claimant to stop hitting the hogs in the head.

Although the claimant denied he hit any hog in the head or inhumanely treated any animal, the employer suspended the claimant based on the quality assurance employee's report. The claimant and the quality assurance employee left work about the same time. The claimant approached the quality assurance employee in the parking lot and asked why he lied about the way the claimant treated animals. After the quality assurance employee indicated he had not lied, the claimant said this is "B---t!" The claimant was upset, but both men went to their vehicles. The employer received a report about this encounter.

The claimant returned the next day, July 14, as the employer had instructed him to do. The employer discharged the claimant for his actions on July 12, violating the employer's policy regarding the treatment of animals and for violating the employer's code of conduct by threatening or intimidating the quality assurance employee.

Prior to July 12, the employer had no record of problems with the way the claimant treated animals at work. The claimant had received a warning for being late after a break, smoking in an unauthorized area and for unsatisfactory job performance.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. The claimant's testimony is credible and must be given more weight than the employer's reliance on unsupported hearsay information from employees who did not testify at the hearing. As a result, a preponderance of the evidence does not establish that claimant violated the employer's policy on how to treat animals because he did not hit any hog in the head or treat an animal inhumanely.

The claimant used poor judgment when he approached the quality assurance employee to ask him why he had lied about the claimant. Even though the claimant was upset and the quality assurance employee may not have felt comfortable, the claimant did not threaten or intimidate this employee. The claimant did not intentionally and substantially violate the employer's code of conduct. A preponderance of the credible evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of July 10, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 3, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of July 10, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the employer.

dlw/pjs