

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KEVIN JACOBS
Claimant

APPEAL NO: 12A-UI-03513-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 02-19-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 28, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on April 30, 2012. The claimant participated in the hearing. Eloisa Baumgartner, Employment Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time maintenance supervisor for Tyson Fresh Meats from September 13, 1994 to February 17, 2012. He was discharged for a lock-out/tag-out safety violation. On February 16, 2012, the plastic conveyer belt was out of alignment and consequently the claimant stopped the machine and conveyor belt. He turned the hydraulic valve off and put his personal lock-out/tag-out on the valve. He then went to take the conveyor belt apart to realign it and once it was realigned he had to put a pin through the conveyor belt pieces. He asked another employee to hold the belting so he could insert the pin in the belt to hold the conveyor pieces together. The employee he asked to help him did not perform his lock-out/tag-out procedure. The superintendent walked by and observed the situation. Anyone who touches the machine in that situation has to be locked out and has to put another lock-out/tag-out on the machine with the claimant's lock and tag. The other employee was not lock-out qualified and therefore did not have any tags. The claimant realized it was a violation after the superintendent pointed it out to the claimant but his first priority was getting the machine running again. On July 2, 2011, the claimant had locked-out/tagged-out a machine and removed his tag at the end of his shift but forgot to tell the next shift about the situation. He could have left his lock-out/tag-out on the machine until his next shift if he notified the oncoming shift but failed to do so. The employer takes safety regulations very seriously and could have terminated the claimant's employment following the July 2, 2011, incident but gave the claimant a written warning and three-day suspension. On February 17, 2012, the employer terminated

the claimant for a safety violation in not requiring his co-worker to lock-out/tag-out February 16, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). While the claimant did commit two safety violations in seven months, the first was due to removing his lock and tag at shift change and forgetting to inform the oncoming shift and the second was due to asking a non-qualified lock-out/tag-out co-worker to help him insert a pin in a part of the conveyor belt so it could be realigned. The claimant did not realize he violated the policy February 16, 2012, until the supervisor walked by and informed him. It is not clear whether the claimant was aware the other employee was not lock-out/tag-out qualified or why the claimant was the responsible party

in that situation given that he did complete his lock-out/tag-out procedure. The claimant took the safety rules and policies seriously but made two errors after working for the employer for 18 years. Under these circumstances the administrative law judge concludes there is no evidence the violations, especially the last one, were intentional misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 28, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css