

**7IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL E POSTON**  
Claimant

**TYSON FRESCH MEATS INC**  
Employer

**APPEAL 22A-UI-01582-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/05/21**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Michael E Poston, the claimant/appellant, filed an appeal from the December 15, 2021, (reference 01) unemployment insurance decision that denied benefits because of a November 3, 2021 discharge from work for excessive unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on February 8, 2022. Mr. Poston participated and testified. The employer participated through Brianna Cook, human resources administrator.

**ISSUE:**

Was Mr. Poston discharged for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Poston began working for the employer on November 6, 2017. He worked as a full-time production worker. His employment ended on November 2, 2021.

The employer terminated Mr. Poston's employment for theft. Ms. Cook could not provide any details about what Mr. Cook is alleged to have stolen, when it happened, where it happened, or any other details about the circumstances of the alleged theft. Ms. Cook testified that the employer did not terminate Mr. Poston's employment for excessive unexcused absenteeism.

Mr. Poston testified that he took one banana from the kitchen without paying for it. He had done this other times and the workers in the kitchen would tell him that that was okay. On November 2, Mr. Poston went to the superintendent's office to discuss his back injury. He was diagnosed with a strained back. The superintendent told Mr. Poston to go to the human resources office where the human resources staff told him that the employer was terminating his employment for theft. Mr. Poston had no prior disciplinary record.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Poston 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(4) provides:

*Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In this case, the employer alleged that Mr. Poston had committed theft but provided no evidence to prove its claim. Mr. Poston provided context: he took one banana without paying, as he had done in the past without consequence, and for some unknown reason, the employer terminated his employment for the last banana. The employer has failed to establish misconduct on the part of Mr. Poston. Benefits are allowed.

**DECISION:**

The December 15, 2021, (reference 01) unemployment insurance decision is reversed. Mr. Poston was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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March 1, 2022  
Decision Dated and Mailed

dz/mh