

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASMIN SAKANOVIC

Claimant

APPEAL NO. 07A-UI-00076-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

**OC: 11/26/06 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 18, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 23, 2007. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Ron Wood participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a laborer from June 21, 2001, to November 29, 2006. The claimant was informed and understood that under the employer's core safety mandates, failure to use protection to prevent falls was grounds for discipline including termination. The claimant had completed training on the core safety mandates on November 10, 2006.

On November 24, 2006, the claimant was assigned the task of doing a complete physical inventory of the spice cooler. His supervisor specifically instructed he claimant that he was to use a forklift to remove the pallets containing bags of spices, count the bags, repair any torn bags, and cover the top of the pallet with a combo cover.

The claimant began doing the physical inspection on November 25. He did not follow his supervisor's instructions to remove pallets with the forklift and count and repair the bags. Instead, the claimant climbed the racks of pallets to do the physical count, which was a willful violation of the instructions given to him by his supervisor and the core safety mandates regarding fall protection because he climbed the racks without a safety harness.

The employer discharged the claimant on November 29, 2006, for his conduct on November 25.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated December 18, 2006, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been

paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css