

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EVA M JOHNSON**

Claimant

**APPEAL NO: 07A-UI-00718-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 12/10/06 R: 02  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Tyson Fresh Meats, Inc. (employer) appealed a representative's January 3, 2007 decision (reference 01) that concluded Eva M. Johnson (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 February 6, 2007. The claimant participated in the hearing. Terry Carmichael, the employment manager, 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.

**ISSUES:**

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

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 7, 2005. The claimant worked as a full-time production worker. The claimant and another employee, B., did not get along because B. knew the claimant's boyfriend. Prior to November 16, 2007, the claimant reported problems with B. When employees complain about offensive comments another employee has made, the employer usually tells the employees to stay away from one another.

The employer had no knowledge of any physical altercation between the claimant and B. prior to November 16, 2006. The employer's written policy informs employees they can be discharged if they engage in a fight on the employer's property. On November 16, 2006, the claimant was sitting on a bench in front of her locker. B. made a negative comment about the claimant's boyfriend and her sex life. The claimant became upset. The two women started fighting by scratching the other person's face and back.

When the employer talked to other employees present during the fight, they reported the claimant started the fight. Since both employees fought, the employer discharged both women on November 17, 2006. As a matter of policy, the employer usually discharges production workers if they have a physical altercation because these employees use knives and the employer wants to prevent an employee from being cut.

The claimant established a claim for unemployment insurance benefits during the week of December 10, 2006. The claimant filed claims for the weeks ending December 16, 2006, through January 27, 2007. The claimant received her maximum weekly benefit amount of \$249.00 for each of these weeks.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 claimant knew or should have known the employer could discharge her if she fought at work with another employee. Prior to November 16, the claimant had problems getting along with B., because B. made negative comments about the claimant's boyfriend. On November 16, the claimant became involved in a physical altercation (fight) with B. Although the claimant asserted B. started the fight, employees present before the fight occurred reported the claimant had started the fight. Even if the claimant did not start the fight, she did more than just defend herself. The claimant violated the employer's code of conduct by fighting with another employee. On November 16, the claimant committed work-connected misconduct. Therefore, as of December 10, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending December 16, 2006, through January 27, 2007. The claimant has been overpaid \$1,743.00 in benefits she received for these weeks.

#### **DECISION:**

The representative's January 3, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 10, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

The claimant is not legally entitled to receive benefits for the weeks ending December 16, 2006, through January 27, 2007. The claimant has been overpaid and must repay a total of \$1,743.00 in benefits she received for these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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