

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORY D PORTER**  
Claimant

**APPEAL NO: 08-UI-10719-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 10/12/08 R: 03  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Cory D. Porter (claimant) appealed a representative's November 3, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 3, 2008. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, 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 January 18, 2005. He worked as a full-time production employee.

During team meetings, the employer warned the claimant and other employees about taking unauthorized breaks. During his employment, the claimant did not receive a written warning for taking an unauthorized break.

On October 9, 2008 the claimant noticed his rubber apron was torn. He asked his immediate supervisor if he could leave the line to get a new apron. The claimant understood his supervisor gave him permission to get a new apron. Before the claimant obtained a new apron, he washed the blood off his equipment. While he was doing this, the general supervisor saw the claimant and asked why he was not working on the line. The claimant showed the general supervisor his torn apron and explained that his supervisor had given him permission to leave the line. When

the general manager talked to the claimant's supervisor, the supervisor denied giving the claimant permission to leave the line.

On October 10, 2008, the employer informed the claimant he was discharged. The claimant went to his union representative to find out why the employer discharged him. The claimant ultimately learned he had been discharged for leaving the line without authorization. The claimant grieved his discharge. As a result of the grievance proceedings, the claimant learned the employer should have suspended him instead of discharging him.

#### **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 section 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).

Based on the evidence presented during the hearing, the claimant had permission to leave the line on October 9 to get a new rubber apron. The employer may have had business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally or substantially disregarded the employer's interests. The claimant did not commit work-connected misconduct. Therefore, as of October 12, 2008, the claimant is qualified to receive benefits.

#### **DECISION:**

The representative's November 3, 2008 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of

October 12, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs