

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN PATTERSON

Claimant

APPEAL NO: 10A-UI-05751-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 03-14-10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 9, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on June 1, 2010. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 production worker for Tyson Fresh Meats from June 25, 2002 to March 15, 2010. The employer held a safety meeting prior to the second shift March 15, 2010, regarding what employees should do in case of severe weather or a chemical leak. At the end of the meeting the woman who conducted the class, Peaches, stated the claimant was disruptive during the meeting and the claimant responded he simply asked and answered questions while other employees were laughing and joking. The claimant was "humiliated and embarrassed" by being singled out. He went to the locker room to get ready for work and a supervisor from the meeting came in and asked if there was a problem and the claimant indicated there was not. The supervisor stated Peaches said the claimant was disruptive and the claimant replied he did not understand why. The supervisor then told him to report to the line. Approximately ten minutes later Supervisor Aaron told the claimant to report to the office and asked if there was a problem at the safety meeting. The claimant replied that Peaches thought he was disruptive because he was asking and answering questions and Aaron told him to return to the line before telling him to go back to the office about ten minutes later. The claimant suffers from bi-polar illness and had been off his medication because of the side effects. He was becoming "overwhelmed" by the situation when he was ordered back to the office to meet with Plant Manager Don and General Supervisor Gerald. Don asked the claimant if he had been drinking and the claimant said he drank a six-pack of beer the night before. Don told him to wash his equipment off and meet them at the personnel office. The claimant called

his brother and asked him to pick him up in 15 minutes because he knew he would be sent home after being told to wash his equipment. He was sent to the nurse's station where his union representative and the nurse asked him to provide a sample for an alcohol screening test. The claimant wanted another union representative because he felt the one present was working with the nurse, and therefore the company, but his request was denied. He did not want to "cause a problem" but said if he did not have any help for his mental health needs he "might as well leave because he needed counseling for (his) mental illness." The employer told him to take the test or his employment would be terminated and the claimant did not take the test because he was "overwhelmed with racing thoughts and (his) rationale was being swayed." Because he was having problems "communicating and coping," he decided it was best for him to leave the premises. He did not understand at that time, because of his mental condition, that he would lose his job if he left. He reported for his regular shift March 16, 2010, and was sent to the Office and then to Personnel where he was told it was sorry but it had to terminate his employment.

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). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence that the claimant was disruptive at the safety meeting or of why it demanded he take an alcohol screening test. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as defined by Iowa law. The employer failed to meet its burden of proof. Therefore, work-related misconduct has not been established in this case and benefits are allowed.

DECISION:

The April 9, 2010, 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/pjs