

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRANCE D SCHAFFER
Claimant

APPEAL NO. 08A-UI-11624-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/09/08 R: 12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc., filed a timely appeal from an unemployment insurance decision dated December 2, 2008, reference 01, that allowed benefits to Terrance D. Schaffer. After due notice was issued, a telephone hearing was held December 31, 2008, with Mr. Schaffer participating. Although the employer provided the name and telephone number of a witness, the number was answered by a recording that said the witness would not be available until the following week. The message also indicated two other people who could be contacted, but it gave no phone number for those individuals.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Terrance D. Schaffer was employed by Tyson Fresh Meats, Inc., as a production worker from January 29, 2008, until he was discharged August 18, 2008. On or about August 10, 2008, Mr. Schaffer received word that his aunt from Chicago had died. He left immediately for Chicago and called the employer before the beginning of his shift on the following Monday. He left a message saying that he would return with documentation establishing that he had been in Chicago for the funeral. He was discharged when he returned, because the employer had assumed that he would not return. Mr. Schaffer did not call every day, but was unaware that he should do so.

Mr. Schaffer worked for the employer in Storm Lake, Iowa. He currently resides in Minnesota, but moved there in October 2008.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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 proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate. The claimant's testimony establishes that he was absent because of a death in the family, that he notified the employer of his need to be absent, and that he provided documentation of the need for absence when he returned. This evidence does not establish misconduct or an intent to voluntarily sever the employment relationship. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated December 2, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw