

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WIE G RIAK
Claimant

APPEAL NO: 09A-UI-03480-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 02/01/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wie G. Riak (claimant) appealed a representative's February 27, 2009 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 voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2009. The claimant participated in the hearing. Will Sager, the complex human resource 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.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 14, 2006. The claimant worked second shift.

In April 2008, the claimant does not remember receiving a warning after his supervisor asked him to stay, but he left work early when there was still work to do. The employer informs employees that if they fail to follow a supervisor's instructions, their job is in jeopardy.

On January 23, 2009, the claimant believed he had completed all his work. Although the supervisor, Dustin Cross, told the employer that he told the claimant to stay at work, the claimant denied Cross said anything to him. The claimant left work two to three minutes early. A co-worker left work before the claimant.

On January 24, 2009, the claimant reported to work as scheduled. The employer suspended the claimant so the employer had time to review the claimant's record. On January 24, the claimant explained he left because he had worked his nine hours.

On January 26, 2009, the employer discharged the claimant for failing to follow his supervisor's directions to stay at work on January 23, 2009. The claimant disputed that Cross told the claimant or his co-worker to stay at work on January 23, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Even though the claimant may have left two to three minutes early on January 23, he did not voluntarily quit his employment. Instead, on January 26, 2009, the employer discharged the claimant.

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 information from the supervisor, the employer established business reasons for discharging the claimant. Since the January 23 supervisor did not testify, the claimant's testimony must be given more weight than the employer's reliance on hearsay information. The claimant testified that the supervisor did not tell the claimant to stay at work. Instead, the claimant left work shortly after his co-worker left because their work was completed. A preponderance of the credible evidence does not establish that the claimant failed to follow a supervisor's instructions on January 23, 2009. Therefore, as of February 1, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's February 27, 2009 decision (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 1, 2009, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css