

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEDRO AMARO
Claimant

APPEAL NO. 12A-UI-13147-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 10/14/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated October 31, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on December 4, 2012. Mr. Amaro participated personally. The employer participated by Mr. Dzmal Grcic, Human Resource Clerk. The official interpreter was Ninfa Redmond.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Pedro Amaro was employed by Tyson Fresh Meats from July 11, 2011 until October 1, 2012 when was discharged from employment. Mr. Amaro was employed as a full-time production worker and was paid by the hour.

Mr. Amaro was discharged on October 2, 2012 for an incident that had taken place the previous day on October 1, 2012. On that day another employee had sprayed the claimant with hot water burning the claimant. Mr. Amaro believed that the act was intentional and began arguing with the other worker when a supervisor could not be found. When the other worker again sprayed Mr. Amaro with the burning hot water, the claimant engaged in a verbal exchange with the other worker referring to the other worker with a racial slur.

Under the company's established Code of Conduct Policy employees are subject to discharge if they harass, discriminate or otherwise violate the policy by using racial names or slurs on the job. Mr. Amaro was aware of the policy and had acknowledged the receipt of the company's code of conduct. Because the claimant had used racial slurs when referring to the other worker during the verbal exchange, Mr. Amaro was discharged from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the claimant knew or should have known that referring to another worker using a racially insensitive slur would be a violation of the company's code of conduct and could result in termination from employment. In the case at hand the claimant had other options available to him in the form of leaving the work area to find a supervisor or going to the company's human resource department to complain about the conduct of the other worker. Mr. Amaro instead again engaged in a verbal dispute with the other worker and in doing so used a patently inappropriate racial slur in referring to the other employee. While the administrative law judge does not condone or sanction the actions of the other worker, Mr. Amaro's use of the racial insensitive racial slur was not only a violation of company policy but also may have tended to escalate the conflict between the workers rather than resolving it.

For the reasons stated herein the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions.

DECISION:

The representative's decision dated October 31, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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