

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACOB D GLADE**  
Claimant

**APPEAL NO. 15A-UI-09004-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE FRESH MARKET INC**  
Employer

**OC: 07/12/15**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jacob Glade (claimant) appealed a representative's August 6, 2015, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with The Fresh Market (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 31, 2015. The claimant participated personally. The employer participated by Dan Goggins, Assistant Store Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on or about September 15, 2014, as a full-time meat manager. The claimant received the employer's handbook. In May 2015, the employer issued the claimant a written warning for food handling and out of date product in the cooler. The employer notified the claimant that further infractions could result in termination from employment.

When the claimant was hired the employer told him he would have three meat cutters to work with him. At the start of his employment the claimant was the only meat cutter. The claimant did not have enough qualified help to perform the work needed. At the end of his employment the employer hired meat cutters but the employer did not provide enough hours for the claimant to train them. The claimant did not work the same shifts as the new cutters and could not train them properly.

On July 8, 2015, the claimant and the store manager went through the meat cases looking for out of date meats together and found none. The district manager found out of date lamb that someone placed another sticker over the "sell by" sticker. The employer terminated the claimant on July 8, 2015.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of his lack of qualified staff. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's August 6, 2015, decision (reference 02) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs