

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB R ALBRIGHT
Claimant

APPEAL NO. 12A-UI-08626-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 04/15/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 12, 2012, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 28, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Kris Rossiter participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a forklift operator for the employer from January 25, 2011, to June 6, 2012. He was informed and understood that under the employer's work rules, he was subject to discharge for violation of safety rules. He was counseled on August 2 and warned in writing on August 4 for failing to wear proper safety equipment. He was issued a written warning and suspended on November 9, 2011, for standing on the forks of his standup forklift.

On June 4, 2012, the claimant was observed turning around his standup forklift in the combo area. Other employees used this area to turn around as well and the claimant had never been informed that it was prohibited. The employer determined the claimant was engaging in horseplay. He was discharged on June 8, 2012, for this.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the

employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony that he was not engaged in horseplay on the standup forklift outweighs the employer's hearsay evidence. No current act of work-connected misconduct has been shown.

DECISION:

The unemployment insurance decision dated July 12, 2012, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs