

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MAL SANGA**

Claimant

**TYSON FRESH MEATS INC**

Employer

**APPEAL 20A-UI-09577-HP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**

**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant Mal Sanga filed an appeal from a July 8, 2020 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting his employment with Tyson Fresh Meats Inc. ("Tyson"). Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 25, 2020. Two Burmese interpreters with CTS Language Link provided interpretation services during the hearing, Interpreter HHRR and Interpreter 12845. Sanga appeared and testified. Lori Drenzo appeared and testified on behalf of Tyson. I took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

**ISSUES:**

Was the appeal timely?

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

**FINDINGS OF FACT:**

On January 23, 2012, Sanga commenced full-time employment with Tyson as a maintenance generalist. At the end of his employment, his immediate supervisor was Jeffrey Smith.

Sanga was a long-term employee of Tyson. Drenzo testified on April 3, 2020, Tyson terminated Sanga for the following reason "[t]eam member missing bolt had fallen out from the clevis on the cylinder and the bottom of the indexer." Drenzo testified the error created a risk of injury to the other employees, but she was unaware of what had exactly happened. There was no evidence presented Sanga intentionally made the error. He had not been disciplined for the same error before. Jim Hook in human resources terminated Sanga. Sanga refused to sign the termination notice. Sanga did not understand whether he had been terminated or quit. Sanga had been disciplined multiple times for attendance, failing to complete assigned tasks, and for failure to respond to calls in a timely manner. Sanga reported there were not enough people at Tyson to perform the work.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. . . .

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision is presumptive evidence of the date of mailing, unless otherwise corrected immediately below that entry. *Gaskins v. Unemployment Compensation Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873 (Iowa 1976). The decision, reference 01, was sent to Sanga in English. Sanga does not read or write in English. Sanga appealed when he learned of the result of the decision. I find he had good cause for failing to file a timely appeal.

Under Iowa Code section 96.5(2)a,

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . .

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 disqualification shall continue 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 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

*Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

871 Iowa Administrative Code 24.32(8) provides:

*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 employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982) The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984)

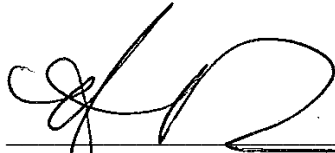
Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits; such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

There was no evidence Sanga intentionally made the error that lead to his termination, or that he had engaged in willful wrongdoing or repeated carelessness or negligence when performing his duties at Tyson. Sanga was a long-term employee. Sanga was disciplined many times in the months leading up this termination, but for other reasons. I do not find Tyson has met its burden to prove Sanga acted deliberately or with recurrent negligence in violation of a company policy, procedure, or prior warning. Tyson has failed to establish any intentional and substantial

disregard of its interest that rises to the level of willful misconduct. As such, benefits are allowed, provided Sanga is otherwise eligible.

**DECISION:**

The July 8, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed. The employer has not established the claimant was discharged for misconduct for a disqualifying reason. Benefits are allowed provided the claimant is otherwise eligible.

  
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Heather L. Palmer  
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September 28, 2020  
Decision Dated and Mailed

hlp/scn