

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**PEACHES W KEHLEAY**  
Claimant

**APPEAL NO. 14A-UI-05636-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 04/20/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated May 21, 2014, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 24, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Kristi Fox participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production worker from December 27, 2000 to April 14, 2014. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were considered to have abandoned their job after five days of absence without notice to the employer.

On April 14, 2014, the claimant was sent home by the Human Resource Manager, Jim Hook, pending investigation of alleged falsification. She was told to report back to the plant on April 21 to find out what the employer had decided.

The claimant followed Hook's instruction and reported back to the plant on April 21, 2014. When she reported to work and met with Hook, he falsely insisted that he had told the claimant to report back to work on April 15. As a result, Hook said he considered her to have abandoned her job due to absences on April 16, 17, 18, 19, and 21. The claimant, however, never intended to quit her job and did not report to work or call in on the days in question because she was told not to come back to the plant until April 21.

## **REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The separation in this case was a discharge.

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

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).

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 was extremely credible and I believe that she was told to come back to work on April 21. The employer's evidence to the contrary was hearsay from Jim Hook and not entitled to as much weight as the claimant's testimony under oath.

No willful and substantial misconduct has been proven in this case. The reason for the claimant's discharge was five alleged no-call, no-shows but as finding of fact show, the claimant was told not to report to work until April 21.

## **DECISION:**

The unemployment insurance decision dated May 21, 2014, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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