

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRANDON RUSS**

Claimant

**APPEAL 20A-UI-01709-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 01/26/20**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On February 24, 2020, Brandon Russ (claimant) filed an appeal from the February 20, 2020 (reference 06) unemployment insurance decision that found he was not eligible for benefits.

A telephone hearing was held on March 12, 2020. The parties were properly notified of the hearing. The claimant participated personally. Tyson Fresh Meats Inc. (employer) registered a number to participate in the hearing. However, the participant was not prepared to proceed with the hearing at the start time and the administrative law judge was placed on hold. After waiting approximately ten minutes for the registered participant to get on the line, the administrative law judge determined to disconnect the call and proceed with the hearing. The employer did not call in during the hearing to participate.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time production worker. Claimant's first day of employment was in September 2019. The last day claimant worked on the job was January 17, 2020. Claimant separated from employment on January 20, 2020. Claimant was discharged on that date.

Claimant was discharged due to an incident on January 16, 2020. Claimant came to work to drop off a doctor's note and parked briefly in a restricted parking spot to do that. When he returned to his car, there was a tow sticker on his car. Claimant explained to the security guard nearby that he was not working that day and just stopped briefly to drop off a doctor's note. The security guard said that didn't matter and he would still be towed if he parked there. Claimant told the security guard he was leaving anyway so not to worry about it. Claimant then left.

Claimant had previously been warned for a similar interaction with a security guard in approximately October 2019. On that occasion, claimant's car was towed because it was parked in the visitor parking area. Claimant yelled at the security guard after that incident and received a

written warning. Claimant never threatened or attempted to run over a security guard with his car on either occasion.

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

For the reasons set forth below, the February 20, 2020 (reference 06) unemployment insurance decision that found claimant ineligible for benefits is REVERSED. Claimant is eligible for benefits, provided he meets all other eligibility requirements.

Iowa Code section 96.5(2)a provides:

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.

Iowa Admin. Code r. 871-24.32 provides in relevant part:

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Employer provided no evidence of misconduct. Claimant credibly testified that he did not threaten a security guard in any way during the October 2019 incident or the subsequent incident in January 2020. While claimant's conduct was less than professional on those occasions, it does not rise to the level of substantial job-related misconduct such that he is disqualified from receiving benefits.

**DECISION:**

The February 20, 2020 (reference 06) unemployment insurance decision is REVERSED. Claimant is eligible for benefits, provided he meets all other eligibility requirements.

---

Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

---

Decision Dated and Mailed

abd/scn