

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GONZALO C JAIMES**

Claimant

**APPEAL NO: 07A-UI-01470-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 01/07/07 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Tyson Fresh Meats, Inc. (employer) appealed a representative's January 25, 2007 decision (reference 01) that concluded Gonzalo C. Jaimes (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 27, 2007. The claimant participated in the hearing and was represented by Mark King, attorney at law. Terry Carmichael appeared on the employer's behalf. Susana Jaquez served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 3, 1994. He worked full time as a production worker at the employer's Perry, Iowa pork processing facility. His last day of work was December 30, 2006.

The claimant suffered at least one work-related injury with the employer on or about September 13, 2004. He returned to work but worked in a lighter duty position than he previously had worked. He filed a claim for workers' compensation. The employer contested his claim. On or about January 2, 2007 the employer's legal counsel and the claimant's legal counsel negotiated a settlement. The claimant signed the settlement agreement. One of the terms of the settlement required by the employer was that the claimant would quit his employment. The claimant did not fully understand this portion of the settlement agreement and sought to return to work shortly after signing the settlement agreement. The employer's human resources director told the claimant he could no longer work for the employer.

## PROCEDURAL RULINGS:

During the hearing, Mr. King asked Mr. Carmichael, the employer's employment manager, a question seeking acknowledgement that in presenting the settlement documents the employer had specified that the claimant was waiving his eligibility to unemployment insurance benefits. Before Mr. Carmichael answered, the administrative law judge intervened and instructed Mr. Carmichael that if he did not know, that could be his answer. Mr. King objected to the administrative law judge's instruction. The instruction was given as it was clear from Mr. Carmichael's prior testimony that he had virtually no knowledge of or involvement in the settlement process, and while he apparently had at least a portion of the documentation in his file, he seemingly was reading the documentation effectively for the first time during the hearing. In effect the question sought a legal opinion which Mr. Carmichael was not qualified to give, and further sought a response that could potentially have been self-incrimination of an offense which would be a serious misdemeanor under Iowa Code § 96.14(1).

Where only one party to a hearing is unrepresented by legal counsel, the administrative law judge has a heightened duty with regard to that party to ensure fairness in the hearing. Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996). Further, the point Mr. King was seeking to establish is not determinative in this case. While a purported waiver of rights to unemployment insurance benefits is void and an employer representative who seeks to obtain such a waiver can be guilty of a serious misdemeanor, in his direct testimony Mr. Carmichael had not contended that the claimant had specifically waived his right to unemployment insurance benefits, only that the claimant had signed a "general waiver" and that the employer viewed the separation as a "voluntary" quit for personal reasons. The voluntariness of the separation can be established without a response as to whether Mr. Carmichael agreed or disagreed that during the negotiation the employer's representatives sought such a waiver.

Likewise, at the close of the hearing the administrative law judge denied Mr. King's request for admission of documents that had been submitted to the representative who had done the fact-finding interview but had not been resubmitted for the appeal hearing. The instructions on the notice for hearing specify:

**EVIDENCE:** You must immediately send any documents you need to prove your case to the Appeals Bureau at the mailing address or fax number listed below. The Appeals Bureau must mail copies to the opposing party so the party can review the documents before the hearing. . . . Information submitted for the fact-finding interview is not automatically part of the record in the appeal hearing. If you submitted information to the fact-finding that you want considered in the appeal hearing, either send it to the Appeals Bureau as discussed above or call the Appeals Bureau to have it copied and mailed to the opposing party." (Emphasis original.)

Neither the claimant nor his attorney had complied with these instructions. Failing to read and follow the hearing notice instructions do not establish good cause for admitting documents to the record which have not previously been distributed as potential exhibits for the appeal hearing. 871 IAC 26.14(2), (7)(c). Further, as to the pertinent provisions of at least part of the settlement documentation which was being offered, a sufficient portion was read into the record from documents the employer's witness did have available to him to provide an adequate context for the administrative law judge to determine the "voluntariness" of the separation. The documents offered would not have further established this issue, and would be primarily probative to the issue of whether the employer attempted to obtain an illegal waiver, an issue

which was not included on the notice of hearing and over which the administrative law judge has no jurisdiction.

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

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did not exhibit the intent to quit and did not act to carry it out. The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary" quit for unemployment insurance purposes. He did not have the option to continue his employment; he could either quit and accept the settlement for his injury or he could continue to incur legal expenses and struggle with the employer to obtain his workers' compensation benefit payment. As the separation was not a "voluntary" quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The resulting issue in this case is whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The reason the employer effectively discharged the claimant was his decision to accept the settlement of his workers' compensation claim. The claimant's actions that led to the loss of his job were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's January 25, 2007 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/pjs