

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES W WOOD
Claimant

APPEAL NO. 09A-UI-19495-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/22/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Charles Wood filed a timely appeal from the December 22, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 9, 2010. Mr. Wood participated. Kris Travis, Employment Manager, represented the employer. Exhibits One through Nine were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Charles Wood was employed by Tyson Fresh Meats, Inc., as a full-time maintenance worker from August 2008 until November 16, 2009, when he was suspended and then discharged from the employment for violating a Core Safety Mandate and OSHA requirement.

The incident that prompted the discharge occurred on November 16, 2009. On that date, Mr. Wood climbed up onto a catwalk, crawled over a functioning conveyor belt on to a second catwalk and stood on the handrail to re-hang plastic to address a leaking roof. Mr. Wood was 20 feet above the ground at the time the safety manager discovered him and directed him to come down. Mr. Wood was not wearing any fall protection gear. Mr. Wood had not followed the lock out / tag out procedure to stop the moving conveyor belt before he ventured above it. Mr. Wood had been fully trained in use of the fall protection gear and in the lock out / tag out process. Mr. Wood knew at the time of his conduct that it violated both the employer's safety protocol and OSHA requirements. During the employer's attempt to investigate the matter, Mr. Wood asserted that others had committed similar safety violations. When the employer probed further and asked for names of other employees who had allegedly engaged in similar unsafe conduct, Mr. Wood refused to provide names.

Under the employer's established safety policy, Mr. Wood's conduct constituted a serious safety violation and subjected him to discharge upon the first offense.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that Mr. Wood knowingly and intentionally violated the employer's established safety protocol and OSHA requirements on November 16, 2009. Mr. Wood's conduct placed Mr. Wood and others at risk of serious injury. Mr. Wood's conduct arose out of a willful and wanton disregard of the employer's interests in maintaining a safe work environment. Mr. Wood's willful and wanton disregard of the employer's interests extended to Mr. Wood's refusal to provide information concerning other alleged unsafe behavior—or his manufacture of the same such information—whichever the case may be.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Wood was discharged for misconduct. Accordingly, Mr. Wood is disqualified for benefits until he has worked in and been paid wages for insured work equal to

ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Wood.

DECISION:

The Agency representative's December 22, 2009, reference 01 decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs