

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERMAINE M JACKSON
Claimant

APPEAL NO: 14A-UI-09738-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/27/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 9, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for nondisqualifying reasons. The claimant participated at the October 8 hearing. Shannon Wehr, a human resource clerk, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 18, 2013. He worked as a full-time production employee. The employer's code of conduct informs employees that if they receive four written warnings for poor work performance within a year, their employment will end.

During his employment the claimant received the following written counseling statements and warnings. On December 11, 2013, the claimant received a written counseling because his work was not satisfactory. At that time he had not yet learned the necessary skills to qualify for the job he was doing. On December 27, 2013, the claimant received a written warning for unsatisfactory job performance when he let hogs go past him and drop to the floor. On January 16, 2014, the claimant received a written warning for unsatisfactory work by letting too many hogs drop.

Shortly after the claimant received the January 16 unsatisfactory job performance warning; he reported pain in his shoulder. Even though the claimant had qualified for his job, the employer had him perform many different jobs in various departments so he would not aggravate problems with his shoulder. The claimant did not have any written warnings concerning unsatisfactory work performance issues again until July 25. The claimant then received a written warning for failing to watch the line which resulted in cross contaminations

and some down production time. The claimant worked to the best of his ability, but he did not meet the employer's performance standards.

The claimant established a claim for benefits during the week of July 27, 2014. He has filed for and received benefits since July 27, 2014.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for justifiable business reasons. Even though the claimant received four written warnings or counseling statements for unsatisfactory work performance in less than a year, he received the majority of them during his first 90 days of employment. The evidence establishes the claimant worked to the best of his ability. Unsatisfactory job performance is a legitimate reason to discharge an employee, but this reason does not establish that the claimant intentionally and substantially disregarded the employer's interests. The claimant did not commit work-connected misconduct. As of July 27, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's September 9, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 27, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css