

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER L ROBINSON**  
Claimant

**APPEAL NO: 07A-UI-01326-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 12/24/06 R: 03  
Claimant: Appellant (2)**

Section 96.5-2- a- Discharge

**STATEMENT OF THE CASE:**

Christopher I. Robinson (claimant) appealed a representative's January 30, 2007 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 21, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on September 6, 2006. The claimant worked as a full-time employee. The claimant worked in the baywash area, washing trailers and inspecting product.

Prior to December 21, the employer told the claimant and other employees if they used a company pickup when doing product inspections, they had to be very careful. On December 21, the claimant used a company pickup to get to the trailers to do product inspections. It was foggy and rainy when the claimant was doing the inspections. When the claimant was almost finished with this job, he parked the pickup behind a trailer he was going to inspect. Before the claimant had an opportunity to move the pickup and go to the next trailer, the driver of the trailer backed up and ran into the pickup. The claimant did not have a walkie talkie with him at the time because the battery in the walkie talkie needed to be replaced.

After this accident occurred the employer immediately discharged the claimant. The claimant understood the employer was not happy that he did not have working walkie talkie with him so he could have contacted the driver about his location. Prior to December 21, the claimant had no understanding his job was in jeopardy.

#### **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 section 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for discharging the claimant. The claimant may even have been negligent, but this was the first time the claimant may have been negligent. The facts do not establish that the claimant intentionally or substantially disregarded the employer's interests. Therefore, the claimant did not commit work-connected misconduct. As of December 24, 2006, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

#### **DECISION:**

The representative's January 30, 2007 decision (reference 04) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of

December 24, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs