

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY R BROWN
Claimant

APPEAL NO. 10A-UI-02457-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/10/10
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Gregory Brown, filed an appeal from a decision dated February 2, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 2, 2010. The claimant participated on his own behalf. The employer, Tyson, did not participate

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Gregory Brown was employed by Tyson from August 25, 2008 until December 16, 2009 as a full-time production worker. He had been contacted by the Cook County, Illinois, district attorney's office to appear as a witness in a murder trial in that county on December 2, 2010. The DA was to have subpoenaed him but the subpoena was never served. As a result he was arrested on December 16, 2009, by Black Hawk County law enforcement and jailed for contempt of court. He was transported to Cook County December 31, 2009, where he was jailed until after the trial on January 20, 2010, when all charges were dropped.

He brought a letter to Tyson from the DA explaining the situation but the employer had already notified him by letter he was discharged.

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 claimant was discharged because he missed work due to being in jail. He was in jail through no fault of his own as the subpoena issued to him was never served. His absences from work do not constitute willful and deliberate misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of February 2, 2010, reference 01, is reversed. Gregory Brown is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css