

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENG D BOL
Claimant

APPEAL NO. 14A-UI-04283-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/23/14
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 14, 2014, reference 01, which denied unemployment insurance benefits finding that he voluntarily quit work under disqualifying conditions. After due notice was provided, a hearing was held in Council Bluffs, Iowa on May 14, 2014. Claimant participated. The employer participated by Ms. Maria Villalpando, Human Resource Representative. Agency Exhibit D-1 was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Mr. Deng Bol was employed by Tyson Fresh Meats, Inc. most recently from November 1, 2010 until March 12, 2014 when he was separated from his employment. Mr. Bol worked as a full-time production supervisor and was paid by salary. His immediate supervisor was Mr. Dave Richardson.

In early December 2013, Mr. Bol was contacted by a doctor who was treating his mother in the Sudan. The claimant was informed that he was immediately needed to return to Sudan to assist in the care of his mother. The claimant went to the company's Human Resource Department and explained his need to be gone from work and the reason. The employer agreed to Mr. Bol's reasons for leaving and the claimant was told only that he needed to complete FMLA paperwork within the next three weeks. Prior to his leaving, the parties did not discuss the length of time the claimant would be gone, and Mr. Bol believed that he was authorized to be gone until the medical emergency had subsided. Mr. Bol could not very often contact his employer because of limited communication abilities in the Sudan. The physician that was attending his mother requested that Mr. Bol remain until "May" however Mr. Bol became concerned about being away from his employment too long and was able to text his employer that he would be back in "March." He then made arrangements for another family member to begin caring for his mother.

The employer responded by letter that Mr. Bol. must return by March 12th, and no later. Mr. Bol did not receive that communication. Mr. Bol had difficulty in arranging transportation out of the Sudan due to the unstable political situation there. Mr. Bol contacted the employer March 12, 2014 after arriving at the airport where outside communication was available. Claimant informed his employer that he was en route home. At that time Mr. Bol was informed that he was expected to be back by that day, or he would lose his employment. Claimant returned as soon as he could book a flight and attempted to reclaim his job position with the company.

The employer had expected Mr. Bol to initially return by February 27, 2014 but, then gave the claimant two additional weeks by applying accrued vacation time to the beginning time of Mr. Bol's request to be gone. Claimant was sent a letter that he must return to work by March 12, 2014 or lose his employment. The claimant did not receive the letter because he was in the Sudan.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In this matter the claimant did not choose to leave his employment with Tyson Fresh Meats, Inc. but was discharged by the employer when the claimant did not return to employment by the date set by his employer. At the time Mr. Bol requested a leave of absence to travel to the Sudan to provide medical care to his mother, Mr. Bol did not know the amount of time that he had been granted to be gone by his employer. Based upon statements that were made to him at the time of leaving, Mr. Bol believed that he was authorized to be gone for a time that was reasonable but the exact date that he was expected to return had not been set by either the employer or Mr. Bol. Claimant was unfamiliar with the Family Medical Leave Act and the paperwork set in the claimant's return date had been completed after Mr. Bol had left for the Sudan. Because of the unusual political situation in the Sudan, Mr. Bol was not able to contact his employer by cell phone and the delivery of mail had been curtailed.

After Mr. Bol had remained in the Sudan for a period of time, he was concerned about his need to return to work and made arrangements to have another relative come to the Sudan to provide care to his ailing mother. Mr. Bol contacted his employer by telephone as soon as he was able to do so on March 12, 2014. He was then told that he was expected to return to work that day. Although the employer had been accommodating in the past by extending Mr. Bol's leave of absence, they were unwilling to do so again and Mr. Bol was discharged when he was unable to return to work that day.

The administrative law judge concludes based upon the totality of the evidence in the record that the claimant's failure to return to work on the date specified by his employer was not intentional, but due to factors that were largely beyond Mr. Bol's control. No date had been set for his return when he left and he had been unable to either contact the employer or be contacted by the employer during the time that he was in Sudan.

While the decision to terminate Mr. Bol may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 14, 2014, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs