

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA R LIPPERT

Claimant

APPEAL NO. 12A-UI-04864-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 04/01/12

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Lisa Lippert, filed an appeal from a decision dated April 23, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 18, 2012. The claimant participated on her own behalf. The employer, Tyson, did not provide a telephone number where a witness could be contacted and 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:

Lisa Lippert was employed by Tyson from January 2007 until April 3, 2012 as a full-time production worker. She had received a copy of the employee handbook which included Tyson's drug policy. It allows for random testing and testing for "reasonable suspicion." Discharge will occur for violation of the policy.

The claimant had called in absent on Monday, April 2, 2012, and during that day she ingested methamphetamine. The next day her supervisor observed her "kind of acting different " and requested she take a drug screening. The sample was given in the nurse's office which was on premises, and initially tested by the nurse with a substance-sensitive strip. The sample tested positive for methamphetamine and cocaine. Ms. Lippert denied taking cocaine but did admit to smoking meth the day before. She was discharged immediately.

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 aware of the drug policy which prohibits employees from being at work under the influence of a controlled substance. In spite of that she called in absent on a Monday, apparently with the intention of consuming methamphetamine, and was still under its influence the next day she was tested. She freely admitted to the nurse and the human resources manager she had smoked the substance and was discharged for violation of the company policy. The employer has the obligation to provide a safe work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.-

DECISION:

The representative's decision of April 23, 2012, reference 01, is affirmed. Lisa Lippert is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css