

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID H RIDENOUR**  
Claimant

**APPEAL NO. 10A-UI-10168-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 06/13/10**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a - Discharge

**STATEMENT OF THE CASE:**

The employer, Tyson, filed an appeal from a decision dated July 6, 2010, reference 01. The decision allowed benefits to the claimant, David Ridenour. After due notice was issued, a hearing was held by telephone conference call on September 3, 2010. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Manager Will Sager.

**ISSUE:**

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

**FINDINGS OF FACT:**

David Ridenour was employed by Tyson from October 9, 2000 until June 14, 2010 as a full-time production worker. The claimant was on light duty, working "three-quarter time," which meant his production rate only had to be three-quarters of the full level. He would work 45 minutes and have a 15-minute break. This had been approved by the employer.

On June 10, 2010, he was meeting in the office with Supervisor Dan Lindgren and Front Line Supervisor Brett Steven to discuss who would relieve him for his hourly break. Mr. Steven said he would find someone or would ask the other two people on the line to "pick up the pace" during the claimant's break. Mr. Ridenour was not happy with this response and he turned to leave the office. As he was leaving he said, "Fuck you, you fucking retard," to the supervisor.

He was sent to the cafeteria at that time and later sent home pending a review of his record. He had received warnings in 2008 and 2009 for violating the code of conduct policy that requires respectful and dignified treatment of other employees. The employer discharged him under that same code of conduct for insubordination and disrespectful conduct toward a supervisor. Such conduct does merit discharge under the provisions of the code of conduct.

David Ridenour has received unemployment benefits since filing a claim with an effective date of June 13, 2010.

## 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 had a history of lashing out verbally at other employees in violation of the code of conduct. The final incident was more than just inappropriate comments to a co-worker but foul, abusive, and insubordinate language to a supervisor. Whether or not Mr. Ridenour agreed with the supervisor's solution to his concerns, his language and conduct were uncalled for. The employer has the obligation to provide a safe and harassment-free 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.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of July 6, 2010, reference 01, is reversed. David Ridenour is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw