

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIJAH S CUNNINGHAM
Claimant

APPEAL NO: 08A-UI-04992-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 04/13/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's May 15, 2008 decision (reference 01) that concluded Elijah S. Cunningham (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2008. The claimant participated in the hearing. Barb Larsen and Kris Travis appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 November 27, 2007. The claimant worked as a full-time productions employee.

During his employment, the claimant reported incidents that occurred with Larsen that he considered discriminatory acts against him. The most recent conduct the claimant reported with Larsen occurred in early April.

On April 8, the claimant was doing knife work. The claimant worked in a cold environment. After the claimant accidentally cut the tip of a glove he wore, he told his supervisor. The supervisor instructed the claimant to get a new glove. The claimant went to get a new glove and another set of knives. While he was there, Larsen saw the claimant from a distance, 8 to 10 feet. She saw him handle knives without a glove on. Larsen immediately went to the claimant and told him to go to the office because he was not wearing a glove while he handled knives.

Larsen understood the claimant was upset because he had been denied a new glove even though his was only wet. Larsen asserted the claimant stabbed his employer-issued polar glove with his knife. Larsen observed three cuts in the glove.

After the claimant went to the office, Larsen suspended him. Larsen concluded the claimant intentionally cut the polar glove with his knife after he had been denied a new glove because it had only been wet and not cut. Larsen considered this destruction of the employer's property. On April 9, the employer discharged the claimant for destruction of company property.

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 primary issue in this case is determining the credibility of the testimony. The claimant testified he accidentally cut his glove while he worked on the line. Although the claimant asked for a new glove, he had not been told whether he could have a new glove or not. The claimant denied he intentionally cut his polar glove. Larson, however, asserted she saw the claimant take out his knife and stab the glove with the knife, which cut the glove. The employer understood the claimant was upset because he was denied a new glove just because it was wet. Both witnesses have a motive to be less than truthful or remember the situation that is most favorable to their case. Since the employer has the burden to establish the claimant committed work-connected misconduct, the employer did not establish by a preponderance of the evidence that the employer's testimony is more credible than the claimant's testimony. The employer could have easily overcome this problem by having one other person testify who witnessed the incident or denied the claimant a new glove. Both the claimant and Larsen testified credibly. Since the facts do not establish which version is correct a preponderance of the evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of April 13, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's May 15, 2008 decision (reference 01) is affirmed. The employer discharged the claimant. A preponderance of the evidence does not establish the claimant committed work-connected misconduct. As of April 13, 2008, the claimant is qualified to receive benefits, provide he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs