

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**YAMAH GABRIEL**  
Claimant

**APPEAL NO: 12A-UI-10995-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 08/05/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated September 6, 2012, reference 01, that held he was discharged for misconduct on August 3, 2012, and which denied benefits. A hearing was held in Des Moines, Iowa, on October 9, 2012. The claimant participated. Eloisa Baumgartner, employment manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time production worker and last worked as a line meat cutter on August 3, 2012. The employer instructed claimant on how to deal with an abscessed meat product as it would come down the line. She was to summon a supervisor or similar person to stop the line and handle the product.

About a week or so before termination, claimant had complained about a sore neck issue that was related to her work. She was seen by a doctor. She continued her normal job because she did not want light duty work.

Management confronted claimant with a report that she had, and another line worker next to her, intentionally stuck a meat abscess. She denied the allegation. Her request to see a security video of the incident was denied. The employer discharged claimant for destruction of the meat product and contamination of her knife.

**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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on August 3, 2012.

Claimant denies the incident. The employer offered an unsigned statement that claimant denies she made. The employer did not offer the security video or any eyewitness statement that claimant intentionally stuck the meat abscess. Job-disqualifying misconduct is not established.

#### **DECISION:**

The department decision dated September 6, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on August 3, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw