

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Knight was employed by Tyson from November 20, 2001 until August 23, 2005 as a full-time maintenance mechanic. He was discharged from the employment.

Other employees reported to management that Mr. Knight was not performing his job duties. As a result of the complaints, Jeff Wagner made observations of Mr. Knight on August 18. The first 15 minutes of his shift, which began at 1:30 p.m., were spent in a safety meeting. During the next 75 minutes, Mr. Knight was observed reading the newspaper in the packaging shop on several occasions. At 3:00 p.m., he went on break and was gone for 26 minutes. He was only entitled to a 15-minute break at that time. From approximately 3:30 until 4:30 p.m., he was working at the "bone cannon." At 4:55 and again at 6:00 p.m., Mr. Knight was observed coming from the back shop area. He did not have any work assignments that would take him to this area of the plant. He did not have any tools or materials with him to indicate that he had been working. At approximately 5:55 p.m., Mr. Knight was observed coming from under the corner of a condenser tower. He did not have any work responsibilities in the area.

Mr. Knight took his lunch break at 7:00 p.m. and took 10 minutes more than allowed. Mr. Wagner observed Mr. Knight sitting in the packaging shop on several occasions between 7:40 and 8:05 p.m. He was observed in the smoking area on several occasions between 8:05 and 8:45 p.m. At 9:00 p.m., he was observed coming from the back shop area. He again did not have any work or tools with him and no work was scheduled for him in the area. He left work at 10:00 p.m. The work detail form completed by Mr. Knight for August 19 indicated he had performed duties that were not done. As a result of providing false information regarding work performed, Mr. Knight was discharged on August 23, 2005.

Mr. Knight filed a claim for job insurance benefits effective August 28, 2005. He has been paid a total of \$2,792.00 in job insurance benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Knight was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Knight was discharged because he failed to perform his job duties and indicated in paperwork submitted to the employer that he had performed the duties. He spent an inordinate amount of time in areas where he had no work-related reason to be, such as the packaging shop. The supervisor who observed Mr. Knight on August 19 was in a position to monitor whether he was performing the duties listed on his work detail. The observations made by the supervisor were consistent with the complaints from coworkers that triggered his observations in the first place.

Mr. Knight had an obligation to perform all assigned work and to be truthful with the employer about what work was completed. He breached his obligation to the employer in both respects. His failure to perform the routine and preventative maintenance required of him had the potential of increasing the likelihood of equipment failures. The administrative law judge concludes that Mr. Knight's conduct of August 19 constituted a substantial disregard of the employer's interests and standards. Accordingly, benefits are denied.

Mr. Knight has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated September 19, 2005, reference 01, is hereby reversed. Mr. Knight was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Knight has been overpaid \$2,792.00 in job insurance benefits.

cfc/s