

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY N KISNER
Claimant

APPEAL NO. 07A-UI-02211-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 01/28/07 R: -3
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 16, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 21, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Jerome Rinken participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a production worker from May 30, 2006, to January 25, 2007. On January 25, 2007, the claimant engaged in a heated verbal argument with a supervisor after the supervisor yelled at her and blamed her for some defective product that she was not responsible for producing. Both the claimant and supervisor exchanged profanity in their argument. During an investigation of the incident, another worker falsely reported that the claimant had threatened to stab her supervisor that day.

There was an instance in early January 2007, when the claimant was first assigned a production job involving a knife. The supervisor was yelling at the claimant to work faster in order to keep up with the speed of the line. The claimant informed the supervisor that she couldn't work any faster and needed to take a break. When the supervisor refused to allow her to take a break, she responded that she was leaving for break and if he tried to stop her, she would stab his hand. The supervisor just laughed and walked away. No discipline was given to the claimant regarding that incident. The claimant made no other comment about stabbing her supervisor during the course of her employment.

On January 25, 2007, the employer discharged the claimant for insubordination and threatening her supervisor.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. The comment made to her supervisor in early January could not be considered a current act of misconduct. A heated argument was not misconduct because the supervisor began yelling at the claimant and used profanity towards her as well.

DECISION:

The unemployment insurance decision dated February 16, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css