

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY D GOINGS

Claimant

APPEAL NO. 08A-UI-04947-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

**OC: 04/13/08 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gary Goings filed an appeal from a representative's decision dated May 14, 2008, reference 01, which denied benefits based upon his separation from Tyson Fresh Meats, Inc. After due notice was issued, a hearing was held by telephone on June 9, 2008. Mr. Goings participated personally. The employer declined to participate.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant last worked for the employer on April 9, 2008. Mr. Goings was employed as a full-time production worker. The claimant was discharged from employment because he was off work under doctor's limitations and could not meet the employer's attendance expectations. Mr. Goings called in each day to report his impending absences, his doctor's excuse and the reason for his non attendance. Subsequently the claimant was fully released by his physician and is actively and earnestly seeking work at this time.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Goings was discharged for misconduct in connection with the employment. It does not. The evidence establishes the claimant was unable to report to work due to a verifiable medical condition and the employer was aware of the claimant's medical condition. Mr. Goings complied with company policy by calling in each day and providing medical documentation.

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.

For the reasons stated herein, the administrative law judge concludes the claimant's discharge took place under non disqualifying conditions. The claimant was unable to report for scheduled work through no fault of his own. The claimant is able and available for work at the time of hearing.

DECISION:

The representative's decision dated May 14, 2008, reference 01, is hereby reversed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs