

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MERLE W BLAIR
Claimant

APPEAL NO. 08A-UI-10229-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 10/05/08 R: 01
Claimant: Appellant (2)**

Section 96.5-2 a - Discharge

STATEMENT OF THE CASE:

Merle W. Blair (claimant) appealed a representative's October 28, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 2, 2008. The claimant participated in the hearing with his attorney, Julie Schumacher. Ed Thiele, the human resource manager, 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 claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 8, 2007. The claimant worked the night shift full-time as a maintenance employee. On September 10, 2008, the employer informed the claimant he was indefinitely suspended because the employer had to investigate an incident involving the claimant. The claimant did not have a phone and it was difficult for the employer to contact the claimant while he was suspended. Thiele wanted the claimant to talk to him on September 15, but the claimant did not understand he needed to talk to Thiele that day. The claimant went to the employer's office on September 17 and talked to Thiele.

After September 17, the claimant went to the work place in the evening to pick up his tools. Thiele was not at work when the claimant was there at night. Although Thiele asked a security guard to tell the claimant to meet with Thiele the morning of September 22, the claimant did not receive this message. When the claimant failed to show up at the work place on September 22, Thiele sent the claimant a letter on September 25. The letter indicated that if the claimant did not contact and talk to Thiele at work after September 25, the employer would assess him attendance points. The claimant did not receive the employer's September 25 letter.

When the claimant did not report to Thiele's office or contact Thiele on September 28, October 2, 3, 4, or 5, the employer assessed him three attendance points each of these days. The employer's attendance policy informs employees they can be discharged if they accumulate 14 or more attendance points. On October 16, the employer terminated the claimant's employment relationship because the claimant violated the employer's attendance policy by failing to contact and talk to Thiele anytime after September 25, 2008, which resulted in the claimant accumulating more than 14 attendance points.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. When the employer placed the claimant on an indefinite suspension, the employer did not make sure the claimant knew and understood the dates Thiele again required the claimant to meet and talk to him. The facts do not establish that the claimant received information the employer would assess the claimant attendance points if he did not contact and talk to Thiele after September 25. The facts establish the employer's actions in assessing the claimant attendance points and concluding he had violated the employer's attendance policy amounts to a discharge.

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).

It was difficult for the employer to contact the claimant because he did not have a phone. The employer acknowledged a certified letter should have been sent to the claimant on September 25 to make sure he received the employer's instructions or course of action. While the claimant made it difficult for the employer to communicate with him, it was not impossible for the employer to advise the claimant he would be assessed attendance points after September 25. Based on the facts in this case, the employer established business reasons for ending the claimant's employment. These reasons do not constitute work-connected misconduct. As of October 5, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's October 28, 2008 decision (reference 01) is reversed. The employer ultimately discharged the claimant for violating the employer's attendance policy. While the employer established business reasons for discharging the claimant, the facts do not establish that the claimant committed work-connected misconduct. As of October 5, 2008, the claimant is qualified to receive benefits, provided 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/kjw