

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW L BURNS

Claimant

APPEAL NO. 07A-UI-03925-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON PREPARED FOODS INC

Employer

**OC: 03/11/07 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Tyson Prepared Foods, Inc. (employer) appealed a representative's April 3, 2007 decision (reference 01) that concluded Matthew L. Burns (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 2, 2007. The claimant responded to the hearing notice and was called at the phone number he had provided. The claimant was not at this phone number. Ronald Wood, the human resource manager at the Waterloo facility, appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant contacted the Appeals Section and provided another phone number in which to contact him. Since the hearing had been closed, the claimant made a request to reopen the hearing. 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.

ISSUES:

Is there good cause to reopen the hearing?

Did the 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 September 29, 1997. The claimant worked as a full-time lead person in the sanitation department. The claimant knew about the employer's policy about no violence in the workplace. Prior to March 13, 2007, the claimant's job was not in jeopardy.

On March 13, as the claimant checked the tines of a pitchfork, an employee unexpectedly raised her hand and the end of the pitchfork brushed against her hand. The employee

immediately punched the claimant in his groin area with her fist. The employee hurt the claimant. The claimant pushed the employee back away from him with the pitchfork. When the employer came back and mockingly asked if he was all right, the claimant became very angry. He grabbed her hand and twisted her away. When the employee fell to the floor, the claimant made the statement that he would kill her. The employer discharged both employees.

The claimant established a claim for unemployment insurance benefits during the week of March 11, 2007. He filed claims for the weeks ending March 24 through April 7, 2007. He received his maximum weekly benefit amount during these weeks.

The claimant contacted the Appeals Section on April 20 and provided a number in which to contact him for the hearing. On April 27, the claimant learned he would be working at the time of the scheduled hearing. The claimant did not contact the Appeals Section to provide another phone number in which to contact for the hearing. The person who answered the claimant's phone indicated she would try to contact the claimant to find out if he was going to participate in the hearing. By the time the claimant contacted the Appeals Section with his new phone number, the hearing had been closed and employer had been excused. The claimant made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The claimant's failure to provide the correct phone number at which to contact him for the hearing when he knew days before the hearing he would not be at the initial phone he gave does not establish good cause to reopen the hearing. Therefore, the claimant's request is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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).

After the claimant "lost his cool," his actions and words amount to an intentional and substantial disregard of the employer's policy. Even though this was the first time the claimant had acted in this way, he was a lead employee and is held to a higher standard than other employees. Also, the facts indicated that initially the claimant did not violate the employer's violence in the workplace policy. It was only after the employee mocked him that he become angry and acted in such a way that amounts to work-connected misconduct. As of March 11, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending March 24 through April 7, 2007. The claimant has been overpaid \$1,002.00 in benefits he received for these weeks.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's April 3, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 11, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending March 24 through April 7, 2007. The claimant has been overpaid and must repay a total of \$1,002.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css