IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CALEB M PENTECOST Claimant **TYSON PET PRODUCTS INC** Employer	**APPEAL 21A-UI-02920-S2-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/25/20** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 30, 2020, (reference 01) unemployment insurance decision that denied benefits based upon a finding that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on March 12, 2021. The claimant Caleb M. Pentecost participated. The employer Tyson Pet Products did not register for the hearing and did not participate. Claimant's Exhibit A was admitted into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's evidence: Claimant was employed full time as a production supervisor from May 3, 2012, until October 29, 2020, when he was discharged.

Employer maintains a social media post which governs employees' use of social media. Claimant maintains a Facebook account. Because a large number of team members were friends with claimant on Facebook, employer occasionally requested claimant post information regarding employer on his personal Facebook page to disseminate to other team members, such as when plant closures would occur.

In April 2020, claimant became concerned that employer was not doing enough to protect its team members from the spread of COVID-19. Claimant spoke to several team members and reported to management what they felt needed to be done to protect them, but no changes were made. On April 27, 2020, claimant received a verbal warning for violating employer's social media policy after he posted on his Facebook page that he was concerned about the protection of employees' safety.

On or about October 25, 2020, claimant posted on Facebook that he was dissatisfied with workplace safety. Several safety positions were eliminated by employer and claimant believed

the elimination of the positions increased the workload of already overworked employees. On October 29, 2020, employer discharged claimant for violating its social media policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Here, employer did not establish claimant engaged in the alleged misconduct it used to justify his termination. The employer did not participate in the hearing and provided no evidence of misconduct by the claimant. Therefore, the employer has not met its burden in establishing disqualifying job misconduct.

DECISION:

The December 30, 2020, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Stephanie Adkisson
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March 16, 2021
Decision Dated and Mailed

sa/scn