

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ACHOK MEL**  
Claimant

**APPEAL NO. 08A-UI-09265-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 03/09/08 R: 12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 6, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 6, 2008. The claimant participated in the hearing with Interpreter Magdy Salama. Susan Pfeifer, Human Resources Manager, and Dennis Burger, Supervisor, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Tyson Fresh Meats from December 7, 2005 to September 13, 2008. The claimant was involved in a verbal altercation with another female employee September 10, 2008, when she told the other woman that her premature babies were “no good” because they were behind glass. After receiving the complaint, the employer issued a written warning to the claimant for making rude and inappropriate comments about another employee’s family, but the claimant refused to sign the warning and the matter had yet to be resolved. On September 11, 2008, as the employees went outside for their second break, the other employee’s boyfriend, Garang Tong, called the claimant a bitch and she was hitting him on his head, chest, and arms when Supervisor Dennis Burger came around the corner. Mr. Burger yelled at them to stop and tried to separate them but the claimant continued hitting Mr. Tong and Mr. Burger was forced to get on the radio and call for backup help. The claimant told him, “You don’t see any of this. You are a new yellow hat.” Mr. Burger replied that he did see and hear what was going on because it was right in front of him, but the claimant kept swinging with one arm while holding onto Mr. Tong’s T-shirt with the other hand. He never saw Mr. Tong swing at or strike the claimant. The employer has a zero tolerance for violence in the workplace policy and after further investigation of the situation, it determined the claimant violated the policy and terminated her employment September 13, 2008.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The verbal altercation between the claimant and Mr. Tong's girlfriend continued from September 10, 2008, to September 11, 2008, when Mr. Tong called the claimant a bitch. While the claimant had every right to be upset by his comment, her proper course of conduct was to report it to a supervisor rather than to "defend" herself by continuously striking Mr. Tong. Although the claimant denies hitting Mr. Tong, Mr. Burger credibly testified as an unbiased witness that the claimant was indeed beating on Mr. Tong and would not stop, telling Mr. Burger that he did not see anything. The claimant was discharged from her employment for fighting with a co-worker. She participated in the altercation and did not attempt to retreat or seek supervisor assistance. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

**DECISION:**

The October 6, 2008, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw