

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FALCAO K MABIKA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-02093-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/13/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Falcao Mabika (claimant) appealed a representative's December 21, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Tyson Fresh Meats Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 25, 2021. The claimant participated personally through Interpreter Amar. The employer participated by Kris Rossiter, Human Resources Employment Manager.

The claimant offered and Exhibits A and B were received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from August 22, 2017, through September 14, 2020, as a full-time production laborer. The employer gave the claimant a promotion and he was happy to start his new job on September 14, 2020. The supervisor expressed displeasure that the claimant received the promotion. The computer printout showed his name with the new job title.

On September 14, 2020, his supervisor told him he had to continue working his old job. The supervisor showed the claimant a new computer printout with the claimant's name crossed out and another employee's name printed under his name. The human resources person told the claimant this was wrong. The company could not take his promotion away. The claimant returned to the supervisor to relay the information. The supervisor sent the claimant home and never told him to return. The supervisor told the employer the claimant quit work for personal reasons and did not complete an exit interview.

The claimant filed for unemployment insurance benefits with an effective date of September 13, 2020. His weekly benefit amount was determined to be \$493.00. The claimant received benefits of \$493.00 per week from September 13, 2020, to the week ending September 26, 2020. This is a total of \$986.00 in state unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

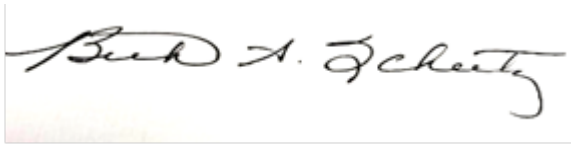
(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of

misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence or witnesses of job-related misconduct. It took the claimant's promotion away from him, sent the claimant home and, for an unknown reason, and never called him back to work. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 21, 2020, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

March 5, 2021
Decision Dated and Mailed

bas/scn