

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CARLOS A CRUZ
1815 FRANKLIN ST
WATERLOO IA 50703

TYSON FRESH MEATS INC
c/o TALX – UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

CORBETT LUEDEMAN
ATTORNEY AT LAW
210 - 2ND ST SE STE 302
CEDAR RAPIDS IA 52401

Appeal Number: 05A-UI-06648-SWT
OC: 05/22/05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 21, 2005, reference 01, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was held on September 1, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with his attorney at law, Corey Luedeman. No one participated in the hearing on behalf of the employer because an order had been issued barring the employer from participating due to its failure to comply with discovery requests.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from September 9, 2003, to May 24, 2005. Pursuant to Iowa Code § 91E.3-1, because he was recruited for his position from Dallas, Texas, a written statement was given to the claimant, which had information

regarding his position, including a description of the responsibilities and tasks of his position. In the statement the claimant's job was described as a saw operator cutting ribs.

On May 24, 2005, a supervisor from another area of the plant told the claimant that he was to move to a different position in the plant, which involved cutting loins and was a lower paying and lower skilled job. When the claimant informed the supervisor that he was working his assigned job and would not move, the supervisor sent him to the cafeteria. He then was sent to the personnel office and was terminated for failing to move to a different position. The employer's attempt to move the claimant to a different position violated the written statement that the claimant received when he was hired.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 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 substantial and 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).

The claimant's reaction to the employer's attempt to move him to a different position was justified based on the fact that the claimant was assigned the job and given a statement as to what his job responsibilities would be. As an employee recruited to work over 500 miles from the employer's plant, the claimant was given a statement laying out the terms and conditions of his employment as required by Iowa Code § 91E.3-1. Those terms and conditions were breached when the employer attempted to assign him to a different job. Furthermore, someone who was not the claimant's supervisor gave the new assignment. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

DECISION:

The unemployment insurance decision dated June 21, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjw