

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NDUWIMANA ANACLET

Claimant

APPEAL NO: 14A-UI-07851-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 03/09/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Nduwimana Anaclet (employer) appealed a representative's July 29, 2014 (reference 06) decision that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment 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 August 21, 2014. The claimant participated in the hearing. The employer's representative received the hearing notice and responded by sending in some potential exhibits on behalf of the employer. However, a review of the Appeals Section's conference call system indicates that the employer's failed to provide a telephone number and a name of a witness or representative who would be available to participate in the hearing. Mulonda Mwangilwa served as interpreter. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on or about April 5, 2014. He worked full time as a skinner at the employer's Perry, Iowa pork processing facility. His last day of work was on or about June 13, 2014. The employer discharged him on that date. The reason asserted for the discharge was because the claimant could not perform his duties due to injury. The claimant had injured his fingers on June 6; he was experiencing cramping and had been placed on light-duty work restrictions.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the fact that the claimant could not perform his work duties. A discharge solely due to an inability to perform work to the employer's satisfaction does not constitute misconduct. Rule 871 IAC 24.32(5). The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute and the claimant is not disqualified from benefits.

DECISION:

The representative's July 29, 2014 (reference 06) decision is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/can