

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARL A LINDEN

Claimant

APPEAL NO. 13A-UI-12908-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 10/20/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 13, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on December 10, 2013. The claimant participated personally. The employer participated by Luis Meza, Human Resources Supervisor. The record consists of the testimony of Luis Meza; the testimony of Carl Linden; and Employer's Exhibits 1 and 2.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a pork processing facility located in Marshalltown, Iowa. The claimant was hired on December 10, 2002. His last day of work was October 14, 2013. At that time he was a full time pet food packer. The claimant was terminated on October 23, 2013.

The incident that led to the claimant's termination occurred on October 11, 2013. The claimant's shift normally starts at 3:30 p.m. The claimant punched in at 3:42 p.m. The claimant also signed a book in the human resources offices that he had started his shift at 3:30 p.m. He also signed out at 3:30 a.m. in the same book. He did not punch out. The claimant was placed on suspension on October 14, 2013. (Exhibit 2)

The claimant had been having difficulty with his badge. For some reason, the claimant's badge did not record his punches. He was given a different badge. The book in the human resources office was used when individuals forgot to punch in or punch out. The claimant had a long record of failing to punch in and punch out. This issue had been addressed with the claimant by his supervisor.

REASONING AND CONCLUSIONS OF 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. Testimony from the employer established that the employer had two methods of recording time. The preferred method was the time clock, which recorded punches from the employee's badge. The other method was signing in and out in a book in the human resources office. The claimant, for reasons he never explained, did not use the employer's time clock but rather signed in and out of the book in human resources. He was counseled about this. The administrative law judge concludes that the claimant's use of the book instead of the time clock was not misconduct since other employees used this method as well if a time punch was forgotten.

The employer terminated the claimant because the claimant had two different times recorded as his start time on October 11, 2013. What the employer did not show was whether the claimant was paid for time he did not work. Although the administrative law judge has some reservations about the credibility of some of the claimant's testimony, there is insufficient evidence that the claimant intentionally falsified his time records on October 11, 2013. The employer had the

burden of proof to establish misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated November 13, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css