

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL M DENG

Claimant

APPEAL NO. 13A-UI-14077-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 11/24/13

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 December 16, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone hearing was held on January 15, 2014. The claimant participated personally. The employer participated by Aureliano Diaz, Interim Human Resources Manager. The record consists of the testimony of Aureliano Diaz; the testimony of Daniel Deng; and Employer's Exhibits 1-9.

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 does pork processing. The claimant was employed at the plant located in Marshalltown, Iowa. The claimant was hired on January 10, 2011. He was a first shift ham boning production employee. He was a full-time employee. His last day of work was November 19, 2013. He was placed on suspension. He was then terminated on November 19, 2013.

The incident that led to the claimant's termination occurred on November 19, 2013. The claimant was suspended for violating a last-chance agreement he signed on September 10, 2012. He was given a last-chance agreement due to insubordination and violation of best work environment policies. The claimant does not know why he was suspended and then terminated. He felt he was doing the job as instructed.

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 disqualifies an individual from receiving unemployment insurance benefits 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. There is insufficient evidence in this record to show misconduct. Mr. Diaz, the employer's witness, did not have firsthand knowledge of the incident that led to the claimant's suspension and later termination. The Employer's Exhibits contain scant information as well, saying only that the last-chance agreement had been violated and that the claimant failed to follow directions and was insubordinate in the human resources office when asked about his job performance. (Exhibit 3) The claimant testified that he was doing his job as instructed. Since there was no eyewitness testimony from the employer on the incident that led to the claimant's termination and insufficient documentary evidence, the employer did not carry its burden of proof to show misconduct. Benefits are denied.

DECISION:

The decision of the representative dated December 16, 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