

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CUE UK
Claimant

APPEAL NO. 110-UI-14635-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 07-17-11
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 12, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 3, 2012. The claimant did participate with the assistance of interpreter Ngun Par and was represented by Christopher Rottler, Attorney at Law. The employer did participate through Aureliano Diaz.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a second shift production coupler full time beginning October 19, 2009 through July 5, 2011 when he was discharged. At approximately 10:30 p.m. on June 28, the claimant was seen by supervisor Brian Adams, climbing up on to a rail that held up a large band saw in an attempt to remove some jammed boxes from the overhead conveyor line. The claimant was standing on the guard railing above a running band saw (used to split cow carcasses in two) which if he had slipped off of would have cut him in two. The supervisor immediately shut off the saw and ordered the claimant down off the railing. The railing was never to be used to access the conveyor belt and was not a platform. The claimant had been trained on how to properly unjam the boxes and knew that he was not to put his hands into the point of operation and was not to stand on the band saw to work on the jammed boxes. The claimant could have been seriously injured or killed by his violation of the employer's safety rules. The claimant did not call a supervisor when the boxes jammed as he had been instructed to do, (and had done in the past) but because they were so busy he decided on his own to climb up and try to unjam the boxes. The claimant violated the employer's own safety rules and OSHA rules, which the employer is obligated to comply with when he climbed up on the railing supporting the band saw. It was not up to the claimant to decide when to follow the safety rules and when not to. Under questioning from his own attorney, the claimant admitted that his feet were only inches away from the running band saw. Under the employer's policy, any employee who violates a safety rule may be discharged upon the first occurrence. The claimant was suspended immediately after the incident and interviewed via an interpreter. He admitted that

he had crawled up on the railing and did not have permission to do so. An employee is not allowed to risk his own safety just because work is busy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant violated the employer's safety rules by standing on railing over a running band saw. It was not up to the claimant to decide when it was acceptable to disregard safety rules and regulations. The claimant's violation was serious as is evidence by the supervisor immediately shutting down the saw and calling the claimant off the railing immediately. The employer's policies do not require that an employee be given numerous chances to seriously injure themselves prior to termination. The claimant knew he was to call a supervisor but did not do so. His action seriously jeopardized his safety and is sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The August 12, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css