

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**SARA A GUTIERREZ**

Claimant,

and

**SWIFT & COMPANY**

Employer.

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**HEARING NUMBER: 11B-UI-14290**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**N O T I C E**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A**

**D E C I S I O N**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The claimant, Sara A. Gutierrez, was employed by Swift & Company from May 5, 2008 through August 4, 2010 as a full-time production worker. (Tr. 3, 16) The employer distributes an employee handbook to each employee which contains several policies (in English and Spanish) including the best work environment policy. (Tr. 13-14) This policy prohibits arguing, name-calling or worrying over another employee's job performance. A violation of this policy can result in an employee's termination. (Tr. 14)

On June 4, 2010, there was much work in the claimant's area. Ms. Gutierrez was a very hard worker that sometimes garnered resentment from her co-workers. (Tr. 23) She saw that one employee named Marley was just standing around, so the claimant directed her to "...hurry up." (Tr. 21) The employer received a report from Mary Saenz (Safety Committee Member) and a couple of other employees that same day (Tr. 5) indicating that the claimant was cursing at everybody on the line the day before. (Tr. 4-5, 20) Several of these employees submitted statements to the employer against Ms. Gutierrez, which

resulted in her suspension. (Tr. 12-13, 20, 24)

On August 4, 2010, Francisco Martine directed the claimant to retrieve some boxes. (Tr. 18) When she went to get boxes, there were none in the area she first looked. She then proceeded into another area, but Francisco told her not to take those boxes. The claimant frustratingly asked where she was supposed to get boxes. Francisco complained that the claimant yelled at him (Tr. 8, 17) to which another employee (Leticia Garcia) wrote up his complaint. (Tr. 12, 18) Several other employees joined in with complaints to the employer that Ms. Gutierrez was not following directions, was being rude, defiant and argumentative with co-workers. (Tr. 6, 9-11) Mr. Nunez complained that the claimant was also always late returning from break. (Tr. 9) The employer terminated Ms. Gutierrez for violating the company's "best work environment rule." (Tr. 3, 16-17) The employer never witnesses any of the incidents. (Tr. 4)

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

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 NW2d 661 (Iowa 2000).

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The record establishes that the claimant was terminated after receiving three disciplines for allegedly violating the employer's "best work environment" policy. However, the employer failed to provide any firsthand witnesses, or documentation to support these allegations in the face of the claimant's vehement denials of the same. And even had the employer produced the written statements submitted as reports of the claimant's alleged behavior, many of those statements were not written by the employees who actually complained about the incidents.

According to Ms. Gutierrez firsthand testimony, she didn't yell and curse at her co-workers. Rather, her strong work ethic may have likely brought about complaints against her. In light of the employer's lack of eyewitnesses at the hearing, we attribute more weight to the claimant's version of events. And while the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Based on this record, we conclude that the employer failed to satisfy their burden of proof.

#### **DECISION:**

The administrative law judge's decision dated December 13, 2010 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

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