

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN L KINNEY**  
Claimant

**APPEAL NO. 10A-UI-17838-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 10/17/10  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Steven Kinney, filed an appeal from a decision dated December 21, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 8, 2011. The claimant participated on his own behalf. The employer, Swift, participated by Employment Manager Jenny Mora.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Steven Kinney was employed by Swift from November 5, 2007 until October 10, 2010 as a full-time production worker. During the course of his employment he received a copy of the employee handbook. One of the policies requires employees to report any damage to company property, but does not specify what the disciplinary action will be for a violation.

As the claimant was leaving work in the early morning hours of October 17, 2010, he was carrying his knife sharpening steel in his back pack. The steel swung out and hit the glass in the entry door, shattering it. Mr. Kinney knew the door had broken but did not report it to anyone, and instead just left. The employer was able to ascertain he had been in the area and when questioned, he admitted to breaking the door accidentally and not reporting it.

The policy does not state that immediate discharge will occur for failing to report damage. The decision as to whether to discharge an employee, or to issue a lower level of discipline, is based on the amount of damage done to the equipment. Because the door the claimant broke was an automatic entrance door, it cost \$5,000.00 to fix, but that was the only determining factor in the discharge.

## REASONING AND CONCLUSIONS OF LAW:

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.

The employer has not disputed that the claimant accidentally broke the entry door and the claimant does not dispute he failed to report the damage. He willfully and deliberately violated company policy by not reporting the damage. But the administrative law judge has to determine whether the cost alone of the damage should be the determining factor in the discharge. The employer did not indicate it would have fired the claimant if he broke a door that cost only \$100.00 to fix.

The deliberate violation of the policy of failing to report damage is the misconduct, not the value of the damage. If Mr. Kinney would not have been fired for damage of a lesser amount, then the amount of the damage is not the misconduct. Because the policy does not specify discharge will occur for a single violation, and no specific criteria is mentioned for determining when discharge will occur, the administrative law judge cannot conclude the claimant's conduct rises to the level of substantial, job-related misconduct. The employer has failed to meet its burden of proof and disqualification may not be imposed.

**DECISION:**

The representative's decision of December 21, 2010, reference 01, is reversed. Steven Kinney is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs