

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DARRELL A JONES**

Claimant

**APPEAL 19A-UI-02507-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 03/03/19**

**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge Misconduct

**STATEMENT OF THE CASE:**

On March 22, 2019, the claimant filed an appeal from the March 20, 2019, (reference 01) unemployment insurance decision that denied benefits based on discharge for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on April 9, 2019. Claimant participated and testified. Employer participated through Human Resource Manager Rogelio Bahena.

**ISSUE:**

Was the claimant discharged for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 2, 2017. Claimant last worked as a full-time utility person. Claimant was separated from employment on March 1, 2019, when he was discharged.

On March 1, 2019, an employee reported to human resources that he had been assaulted by the claimant while at work. Bahena investigated the allegation by reviewing security footage and speaking to witnesses, including claimant and the accuser. The security footage was blurry, but appeared to show claimant spraying water in the direction of the other employee, who did not have his rain gear on. The video showed the employee approach claimant to ask him to stop and the claimant continue to spray him. The video then showed claimant stumble backwards, though it was not clear whether it was because he was pushed by the other employee. Claimant is then seen punching the other employee in the jaw. The other employee fell to the ground and claimant ran away.

The two witnesses interviewed confirmed claimant punched the other employee. One of the witnesses added that the other employee was generally very calm and easy to get along with. When the other employee was interviewed he denied pushing claimant. During claimant's interview he told Bahena that the other employee had brushed against and "kind of grabbed" him, causing him to lose his balance. He denied deliberately spraying the other employee with water or hitting him. At the end of the investigation, the employer determined the other employee's version of events was more credible and claimant was discharged for violating the

employer's policy regarding violence in the workplace. Claimant was aware that violence in the workplace was not tolerated and hitting someone could lead to immediate termination.

### **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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not

misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events. The employer's conclusions were reached after an investigation, which including reviewing security footage and interviewing two independent witnesses to the incident. Their stories were consistent over two interviews and with the statement given by the other employee.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Employers generally have an interest in protecting the safety of all of its employees and invitees. Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995). Here, claimant instigated the confrontation when he sprayed the other employee with water and refused to stop. Claimant then escalated the situation when he punched the other employee. Claimant's physical aggression was in violation of specific work rules and against commonly known acceptable standards of work behavior. This behavior was contrary to the best interests of the employer and the safety of its employees. Claimant's conduct is disqualifying misconduct, even without prior warning. Benefits are denied.

#### **DECISION:**

The March 20, 2019, (reference 01) unemployment insurance 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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs