

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JUSTIN L GIBSON**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 20A-UI-11638-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/07/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Justin Gibson (claimant) appealed a representative's September 10, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Swift Pork Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 6, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issues include whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from August 7, 2019, to December 2019. He was rehired on February 25, 2020, full-time June 6, 2020. The employer has a handbook but he did not sign for receipt of it during his second period of employment. Profanity and foul language is used by supervisors and employees in the workplace. The claimant is not aware of anyone who was ever reprimanded for the use of profanity.

During his second period of employment, twice the claimant requested and the employer granted two days off so the claimant could visit his children in Michigan. Additionally, the claimant was sent home after exhibiting signs of illness at work. The employer would not allow the claimant to return to work until he was tested for Covid-19 and could provide negative test results. The claimant was absent for one week.

The employer erected an area next to the guard shack that held supplies and masks for incoming workers. On June 6, 2020, the claimant arrived at work, took a facemask from the supply area, and put it on before proceeding to the guard shack, as was his custom. A new

supervisor immediately began yelling at the claimant, asking him "Where the fuck is your mask". The claimant knew the supervisor as a recently promoted yellow hat. The supervisor berated the claimant for approximately fifteen minutes as he made his way through the guard shack, the temperature check area, and through the building.

The claimant went to the locker room to change. He wanted to go to the human resources department and turn in the supervisor but he knew he would be tardy for work. When the claimant arrived at the line, the supervisor was there screaming and yelling at him about "the fucking mask". The claimant responded, "Fuck this. We can go to fucking human resources because I didn't do nothing wrong".

The claimant and the supervisor went to human resources. The supervisor continued to yell at the claimant. The supervisor laughed at the claimant while he explained what happened to the human resources person. The employer told the claimant he was suspended for talking to his supervisor in an unkind manner. After five days, the employer called the claimant and terminated him.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

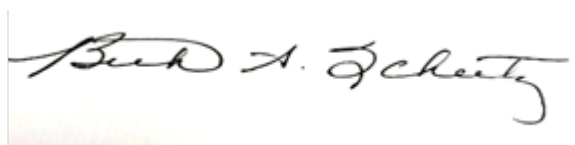
Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer terminated the claimant for complaining about a supervisor's behavior. This is not misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

#### **DECISION:**

The representative's September 10, 2020, decision (reference 02) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



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Beth A. Scheetz  
Administrative Law Judge

November 13, 2020  
Decision Dated and Mailed

bas/scn