

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY A BRADBURY**  
Claimant

**APPEAL NO. 12A-UI-10873-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 08/12/12**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.32(9) – Disciplinary Suspension

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 29, 2012, reference 01, decision that allowed benefits in connection with an August 9, 2012 disciplinary suspension. After due notice was issued, a hearing was held on October 3, 2012. Claimant Timothy Bradbury participated. Aureliano Diaz, Human Resource Manager, represented the employer.

**ISSUE:**

Whether the claimant was suspended or discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Timothy Bradbury has been employed by Swift Pork Company, a/k/a JBS since 1989 and continues to work full-time for the employer. Prior to August 9, 2012, Mr. Bradbury worked in the rendering department. On August 9, 2012, the employer indefinitely suspended Mr. Bradbury based on alleged insubordination. On that day, Superintendent John Holden had told Mr. Bradbury not to dump any more “combos.” The combos contained meat scraps and water. Mr. Bradbury, relying on prior policy of dumping the combos into the surge bins to get them off the floor, dumped two combos containing meat scraps and water. On August 14, the employer met with Mr. Bradbury and union representative to discuss the circumstances under which the employer would allow Mr. Bradbury to return to the employment. The employer required that Mr. Bradbury execute a last chance agreement. The last chance agreement moved Mr. Bradbury to a different department. Mr. Bradbury returned to the employment on August 15, 2012 and had continued to work on the kill floor ever since.



## REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code section 871 IAC 24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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. See 871 IAC 24.32(4). When it is in a party's



power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish that the August 9, 2012 disciplinary suspension was based on misconduct in connection with employment. The employer alleges that Mr. Bradbury engaged in insubordination. The employer was unable to state what the specific directive was. The employer presented minimal evidence to establish that the purported directive was reasonable under the circumstances. The employer also failed to present evidence to establish that Mr. Bradbury's conduct was unreasonable under the circumstances. The employer had the ability to present testimony from persons with personal knowledge of the incident that triggered the suspension.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Bradbury was suspended on August 9, 2012 for no disqualifying reason. Accordingly, Mr. Bradbury was eligible for benefits during the period of suspension, provided he was otherwise eligible. The employer's account may be charged.

**DECISION:**

The Agency representative's August 29, 2012, reference 01, decision is affirmed. The claimant was suspended on August 9, 2012 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs