

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**EDWIN B PAREDES**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 15A-UI-06987-KCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/31/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 15, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 14, 2015, in front of Administrative Law Judge Kristin A. Collinson. Claimant participated. Employer participated through Stacey Santillan, Human Resources Manager and was represented by Jennifer Rice of Talx UCM Services.

The entire record was reviewed by Administrative Law Judge Teresa K. Hillary, including listening to the entire hearing on September 26, 2015.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production supervisor beginning on April 5, 2010 through June 2, 2015 when he was discharged. As a manager the claimant was not only expected to enforce the employer's policies but he was expected to follow them as well. The claimant had been counseled about how he treated employees and had been trained on how to follow the employer's best work environment policies. On April 4, the claimant received his final written warning for poor treatment of employees after he wrote on a white board in the production area: "Congrats, Kevin Dotsal you have won a trip to h.r. (sic) for the most strapped hogs." The claimant should not have publicly announced any discipline for any employee.

On May 27, the claimant was involved in an argument with John Kalolo, an employee he supervised. During the argument and conversation with Mr. Kalolo the claimant called him a "motherf\*\*ker" and threatened to fire him. The conversation was heard by another employee, Artemio Sanchez, who was interviewed by the employer and supported Mr. Kalolo's version of what had occurred. A supervisor is not allowed to call an employee a "motherf\*\*ker" nor are they allowed to use profanity when speaking to employees. The claimant violated the employer's policies in the way he treated and spoke to employees after being warned about similar behavior and conduct.

## 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 § 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.

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).

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. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The employer provided the most credible evidence as they had a third party witness to the claimant swearing at an employee and threatening to fire him. The claimant's version of events was not supported by the witness to the event. The claimant's allegation that this employee had threatened to kill him before is not credible in light of his failure to report such serious conduct previously. The claimant's conduct violated the employer's policies and his final written warning. The claimant was discharged for disqualifying job misconduct. Benefits are denied.

**DECISION:**

The June 15, 2015, (reference 01) 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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Teresa K. Hillary  
Administrative Law Judge for  
Kristin A. Collinson  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kac/pjs