

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIBBE D BOUWERS
Claimant

APPEAL NO. 11A-UI-06516-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

**OC: 02/20/11
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Swift Pork Company filed a timely appeal from an unemployment insurance decision dated May 6, 2011, reference 03, that allowed benefits to Tibbe D. Bouwers. After due notice was issued, a telephone hearing was held June 14, 2011. Employment Manager Jenny Mora participated for the employer. Mr. Bouwers did not provide a telephone number at which he could be contacted. The administrative law judge takes official notice of agency benefit payment records.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Tibbe D. Bouwers was employed as a production worker by Swift Pork Company from December 6, 2010 until he was discharged February 11, 2011. The final incident occurred on the day of discharge. Violating company safety rules, Mr. Bouwers climbed over a moving table while going from his work station to the restroom. Mr. Bouwers could have walked around the table. On December 15, 2010, Mr. Bouwers had received a warning for three other safety violations occurring within one week. Mr. Bouwers had received safety training when he was hired.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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 evidence in the record establishes repeated safety violations which must be viewed in the context of the claimant's safety training. Repeated violations of company policy is one form of misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated May 6, 2011, reference 03, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs