

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAU M MAYOR**  
Claimant

**APPEAL NO. 13A-UI-07578-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 06/02/13**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 24, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on July 31, 2013. Claimant participated. Employer participated through Louis Meza, Human Resources Supervisor.

**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 worker beginning on April 12, 2010 through June 7, 2013 when he was discharged. On May 29 the claimant arrived at his work station and complained to his supervisor Paul that the inside of his gloves were wet. All employees are required to dip their gloved hands in a sanitation solution right before reporting to their work station. The gloves reach well beyond an employee's wrist and there is no reason for employees to dip their gloves in so far that the solution would slosh over the top of their gloves. The supervisor told the claimant to start working and he would bring him a new pair of gloves in about ten or fifteen minutes. The claimant refused to work with wet gloves. He was told repeatedly by his supervisor to start working and he would bring him new gloves. There was no safety or policy rule infraction by the supervisor for requiring the claimant to work with wet inside his gloves. The claimant did not begin working, instead he went to the human resources offices and sat down. He told no one in the human resources offices why he was there and no supervisor instructed him to report to the human resources offices. When his supervisor could not locate him after looking for him in the plant for at least one-half hour he went to the human resources offices and found the claimant sitting in a chair in the office. When asked by his supervisor and Mr. Meza who had told him to report to the human resources office, he could not provide an answer. Instead of following his supervisor's orders the claimant avoided work and without reporting to anyone in management, went to the human resources offices. The claimant was suspended from work that day while an investigation was conducted. The claimant had a long prior history for discipline for insubordination in his failure to follow reasonable instructions

from his supervisor. The employer was not required to provide the claimant with multiple chances to correct his behavior. The employer's policy, a copy of which had been given to the claimant allows the employer to skip any step in the disciplinary process. The claimant had prior discipline for failure to follow instructions from his supervisor on November 21, 2012, February 15, 2013 and March 12, 2013. The employer decided that the last incident was enough and the claimant was discharged on June 7, 2013.

### **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.

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 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 claimant was not told to go to the human resources offices on May 29. He was told repeatedly by his supervisor to go to his place on the line and begin working. It was reasonable for his supervisor to ask him to wait ten or fifteen minutes for new gloves. There was no safety rule violation when the supervisor required him to work with wet gloves. The claimant simply did not want to work and had a long

disciplinary history for failure to follow instructions. The claimant's repeated failure to follow instructions amount to misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The June 24, 2013 (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

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Decision Dated and Mailed

tkh/pjs