

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BERLE L WILLIAMS
Claimant

APPEAL NO. 09A-UI-02630-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 01/25/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 19, 2009, reference 01, that concluded he had been discharged for work-connected misconduct. A telephone hearing was held on March 10, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Tony Luse participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production employee from September 11, 2000, to January 21, 2009. He had received a suspension on May 20, 2008, due to threatening and confrontational conduct. The claimant was informed and understood that under the employer's work rules, profanity and insubordination was prohibited.

On January 21, 2009, the claimant pointed out to the hog buyer, Tim Butler, that there was an injured hog with its foot cut off. Butler came out to the scale and pointed his figure in the claimant's face. He told the claimant "Don't fucking accuse anyone of anything unless you know for sure what's going on" and insisted the hog had come off the truck injured. The claimant replied that he was not accusing anyone of anything he was just letting him know about the hog. He asked a nearby bobcat operator if he had accused anyone, and the operator agreed that he had not. Butler told the claimant if had a problem, they could take it to the office. The claimant responded "That's fine but can I take my lunch first?" Butler replied, "After your lunch, we will take it to the office."

The claimant took his lunch and went to the office. Butler and some other employees had prepared statements accusing the claimant of repeatedly directing profanity at Butler and displaying his middle finger during their conversation before lunch, which was untrue. The employer discharged the claimant for inappropriate conduct insubordination.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly about what had happened and his testimony is worth more weight than the hearsay evidence presented by the employment manager. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated February 19, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs