

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENNIS MACHADO
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A-UI-05489-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/6/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On February 16, 2021, Dennis Machado (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated February 9, 2021 (reference 01) that denied benefits based on a finding claimant was discharged from work on December 8, 2020 for violation of a known company rule.

A telephone hearing was held on April 23, 2021. The parties were properly notified of the hearing. The claimant participated personally and with the assistance of a Spanish-language interpreter. Former coworkers Yunier Leiva and Margarita Rodriguez participated as witnesses for claimant. Swift Pork Company (employer/respondent) participated by did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

ISSUES:

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer in September 2018. The last day claimant was present at the job performing work was December 2, 2020. Claimant was suspended on that date. He was then discharged on or about December 8, 2020.

Claimant was suspended and discharged due to an accident on December 2, 2020 involving a “gun” used to slaughter pigs. On that date, the gun claimant was using misfired and so did not immediately kill the pig. The misfire was due to the gun not being properly maintained. It was not claimant’s responsibility to maintain the gun; there was a separate department responsible for that. There was nothing claimant could have done to prevent the misfire.

Similar misfires occurred both before and after the incident which led to claimant’s discharge. However, employer has not disciplined or discharged those employees for those misfires.

Claimant and others were initially told he would not be discharged due to the misfire. Claimant believes he was discharged because government inspectors were present on that date and so employer believed it must respond more harshly than in the past or “make an example” of claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated February 9, 2021 (reference 01) that denied benefits based on a finding claimant was discharged from work on December 8, 2020 for violation of a known company rule is REVERSED.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 provides in relevant part:

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 employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what

misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). The incident leading to discharge was an accident was totally out of claimant's control. This was not a deliberate act and does not rise to the level of disqualifying misconduct. Benefits are therefore allowed, provided claimant is otherwise eligible.

DECISION:

The February 9, 2021 (reference 01) that denied benefits based on a finding claimant was discharged from work on December 8, 2020 for violation of a known company rule is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge

April 28, 2021
Decision Dated and Mailed

abd/ol