

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL P COOP
Claimant

APPEAL NO. 12A-UI-09742-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 07-01-12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 7, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 5, 2012. The claimant did participate. The employer did participate through Aurliano Diaz, Human Resources Manager and (representative) Javier Sanchez, Human Resources Assistant Manager. Employer's Exhibit One was entered and received into the record.

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: The claimant was employed as a load planner full time beginning November 20, 2006 through July 6, 2012 when he was discharged. The claimant had received the employer's handbook which provides the employer has a zero tolerance for threats of workplace violence. The claimant contends he jokingly threatened to stab a coworker in the eye. The coworker did not find the 'joke' funny and complained that he wanted the harassment and hazing to stop. After interviewing the witnesses and the claimant, the employer discharged the claimant for threatening to harm another coworker. The claimant also had pulled a knife from a drawer shortly after he made the 'joke.'

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew or should have known that the employer would not tolerate threats of physical violence against coworkers. The 'joke' was not funny to the claimant's coworker. While the claimant may have intended to joke, threatening to stab a coworker in the eye, then holding a knife is not funny and is, under the circumstances, sufficient misconduct to disqualify the claimant from receipt of unemployment insurance benefits.

DECISION:

The August 7, 2012 (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css