

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHE GAUERKE
Claimant

APPEAL NO. 09A-UI-04278-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 02/01/09
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Che Gauerke (claimant) appealed an unemployment insurance decision dated March 11, 2009, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Swift and Company (employer), doing business as JBS, for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2009. The claimant participated in the hearing. The employer participated through Tony Luse, Employment Manager, and Jason Smith, Second Shift Supervisor. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time mechanic from March 10, 2008 through January 26, 2009, when he was discharged for a major safety violation. A failure to follow the lock-out, tag-out procedure is cause for immediate termination. Before an employee can work on a moving piece of equipment, that equipment must be locked out and tagged out so that it cannot accidentally get turned on while the employee is working on it; failure to do so could result in serious bodily injury or death. The claimant contends he was not aware of the fact that a lock-out, tag-out violation would result in termination but was aware that it could result in termination. On January 22, 2009, the claimant was working on the number one chain on the kill floor, wherein each link is six inches by two inches in diameter. He had a problem with the top plate getting stuck in the chain, so he called over a supervisor. When the supervisor arrived, the equipment was turned off and the claimant had his hands in the chain with no lock on it. The supervisor put his own lock on it and directed the claimant to get away from the equipment. The claimant was sent to human resources that day and was subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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 claimant was discharged for a major safety violation when he failed to lock a moving piece of equipment before working on it. Since violation of this particular policy could result in serious bodily injury or death, violations result in immediate discharge and this fact is clearly communicated to all employees. The claimant's violation of the lock-out, tag-out policy shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated March 11, 2009, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw