

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SOLOMON A HABTESION
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 18A-UI-05793-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/29/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 18, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 12, 2018. Claimant participated personally and through Interpreter 21762 with CTS Language Link. Employer did not answer at the number it provided for the hearing and did not participate in the hearing.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 31, 2015. Claimant last worked as a full-time slicer/operator. Claimant was separated from employment on April 27, 2018, when he was terminated.

Claimant worked in the chemical area before he began to work as a slicer/operator. During the last eight or nine months of his employment, employer continuously assigned claimant to work in the chemical area the majority of the time. Claimant did not want to work in the chemical area because it was a more dangerous area. The chemical area smelled very bad and gave claimant a rash.

On April 27, 2018, employer asked claimant to work in the chemical area. Even though claimant did not want to work in the chemical area, he agreed to do so. However, when he got to the area, a manager asked claimant to perform work that required him to lift 70 to 100 pounds. Claimant said he could not do that because of a previous work injury. Employer then asked him to work with a new employee. Claimant began working with the new employee, but the employee told a manager that claimant sprayed chemicals on him. This was a false accusation as claimant had not even begun spraying chemicals. Claimant was taken into the human resource office and was interviewed regarding the accusation. Claimant denied the allegation and employer had no evidence to prove it occurred. Employer asked claimant to return to work in the chemical area. Claimant did not want to do so, but after being counseled

by his union representative, told employer he would. Nevertheless, employer terminated his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 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 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.

Iowa Admin. Code r. 871-24.32(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.

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 has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). The law limits disqualifying misconduct to

substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, employer terminated claimant's employment after he stated he did not want to work in the chemical area because it was not his permanent assignment and because of being falsely accused of spraying another employee with chemicals. Ultimately, though, claimant agreed to go back to work in the chemical area. Claimant did not fail to follow reasonable instructions. Employer failed to show claimant was terminated for misconduct. Benefits are allowed.

DECISION:

The May 18, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn