

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSA M MADRID

Claimant

APPEAL NO: 17A-UI-11101-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 10/01/17

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 24, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 16, 2017. The claimant participated in the hearing with CTS Language Link interpreter Oscar. Emily Pottorff, Human Resources Assistant Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-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 full-time general laborer for Swift Pork Company from July 12, 2010 to October 6, 2017. She was discharged for insubordination.

On August 4, 2017, the claimant asked her supervisor for her birthday off. He said he would have to think about it because several others had requested the day off. The claimant became very aggressive. On the same day a different supervisor told the claimant to dump a barrel of inedible product and the claimant immediately turned away from him and said no before walking away and off the floor. The supervisor took the claimant to human resources and she was very upset. She refused to take any responsibility for her actions and instead blamed others. She was “outraged” during the entire meeting. The employer issued the claimant a final written warning for insubordination and the claimant stated she was going home. The employer told her she needed to tell her supervisor she was leaving or she would be considered to have walked off the job and the claimant said, “Go ahead and fire me. It doesn’t matter.” She gathered her equipment and the employer thought she was going to quit. She waited 20 minutes until a supervisor came to the area. The claimant was crying and asked if she could go home and the supervisor allowed her to leave.

On October 4, 2017, the claimant was on light duty. The employer assigned her to work in the employee supply area. She went to human resources and said employees were telling her what

to do and being mean to her. She stated she was being told to work outside her restrictions but her restrictions changed October 3, 2017, and she was able to do more. A new superintendent asked to see the claimant's red card which stated her restrictions and was outdated because of her new restrictions. The claimant refused to give him her card and was upset because she did not want to perform the job assigned. The employer explained the claimant could do the job because it was within her restrictions but the claimant was very upset. She left the human resources office and went to the health services and safety assistant manager and the nurse. The claimant continued to be upset and would not give the nurse her red card so she could see her new restrictions. She called the nurse and superintendent racist even though the superintendent was also Hispanic. The workers compensation nurse confirmed the job assigned was within the claimant's restrictions. On October 6, 2017, the employer reviewed the situation and considered the fact the claimant was on a final written warning and was insubordinate October 5, 2017, and terminated the claimant's employment.

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 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(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 of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was on a final written warning for insubordination August 4, 2017, and she was insubordinate October 4, 2017, because she refused to perform her job, refused to show management or the nurse her red card, and for her overall demeanor toward management. The claimant's behavior was inappropriate and unprofessional. It was not reasonable for the claimant to refuse to do her assigned task and it was particularly unreasonable for her to refuse to show her red card when requested.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The October 24, 2017, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn