

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIGUEL DIAZ
Claimant

APPEAL NO: 060-UI-10780-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 03/12/06 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Miguel Diaz (claimant) appealed an unemployment insurance decision dated September 22, 2006, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Swift & Company (employer) for work-related misconduct. Administrative Law Judge Steve Wise was scheduled to conduct an initial hearing on this matter in appeal 06A-UI-09450-SWT on October 9, 2006 but the claimant failed to participate and a decision on the record was issued. The claimant appealed the decision indicating he did not participate due to language difficulties. The Employment Appeal Board remanded for a new hearing in an order dated November 3, 2006. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 27, 2006. The claimant participated in the hearing. Ike Rocha translated on behalf of the claimant. The employer participated through Aaron Vawter, Human Resources Coordinator and Translator Xavier Sanchez. 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 considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from July 5, 2005 through September 5, 2006 when he was discharged for violation of company policy. On approximately August 25, 2006, the claimant violated policy by removing a wizard knife from its machine on the production line. Only qualified persons are allowed to remove this knife. The claimant took the knife and washed it off in the sink. The utility worker on the line told the claimant he was not allowed to do that. The claimant became angry and shoved the utility employee. The employee reported the incident to the employer who initiated an investigation. When meeting with the claimant, the employer provided a Spanish interpreter, in addition to the union representative who also speaks Spanish. The claimant admitted shoving the utility worker 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 section 96.5-2-a.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for physically shoving a co-worker. Although he denies any wrongdoing now and claims he signed a document that he did not know what it said, the evidence presented by the employer's interpreter unequivocally confirms the claimant did admit his actions at the time. He had two other individuals in the meeting with him who spoke Spanish and there is no question that he understand what he was being accused of and/or what he admitted doing. That claim is only being brought up now in an attempt to obtain unemployment insurance benefits. The claimant's physical assault on a

co-employee was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. 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 September 22, 2006, 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/pjs