

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JEFFREY L ROSS**

Claimant

**APPEAL 21A-UI-04151-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 09/20/20**

**Claimant: Appellant (2R)**

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

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant, Jeffrey L. Ross, filed an appeal from the January 21, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 5, 2021. The claimant participated personally and was represented by Sheila Vitek, claimant of sister. Dennis Shannahan, father of claimant, also testified. The employer, Swift Pork Company, registered Vicky Cervantes, who was unavailable when called for the hearing. Two attempts were made to contact her and a voicemail provided, directing her to call the Appeals Bureau immediately if she wanted to participate. She did not respond during the hearing.

The administrative law judge took official notice of the administrative records. Claimant Exhibit A was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a maintenance mechanic until September 8, 2020 when he was discharged.

Claimant received the employer handbook upon hire and had no prior warnings. Approximately one week before claimant’s discharge, he had an incident at work in which he felt drowsy. Claimant had been working 13/14 days and was tired. Claimant also took medication for seizures and had begun a second medication related to pain management. Claimant stated he sat down next to his toolbox and didn’t recall what happened, except that an ambulance was

called, he declined to go and his parents picked him up. Claimant was advised to bring a UA sample in before his next shift. Claimant denied misuse of the medication or mixing it with alcohol or other controlled substances. Claimant stated he had previously had one other medical episode related to medication use while employed. When claimant tried to return to work, he was advised he had been discharged.

Claimant has not performed work for any subsequent employer since separation. Claimant has been incarcerated since October 13 or 25, 2020 in Marshall County. Weekly continued claims have been made for claimant for the weeks of October 10, 2020 through February 13, 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged, but not for disqualifying 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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this case, the employer did not participate in the hearing to present evidence regarding claimant's discharge. The undisputed evidence is claimant was discharged after he had an adverse reaction to a prescribed medication, which caused a medical episode. Employer did not refute the evidence presented.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden

of proof in establishing that the claimant's discharge was due to job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

The issue of whether claimant is able to and available for work due to incarceration is remanded to the Benefits Bureau/Investigations and Recovery Unit for an initial investigation and decision.

**DECISION:**

The unemployment insurance decision dated January 21, 2021, (reference 03) is REVERSED. Claimant was discharged for no disqualifying reason. Benefits are allowed, if claimant meets all other requirements.

**REMAND:**

The issue of whether claimant is able to and available for work due to incarceration is remanded to the Benefits Bureau/Investigations and Recovery Unit for an initial investigation and decision.



---

Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

April 8, 2021  
Decision Dated and Mailed

jlb/kmj