

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MIN R RAJA
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 17A-UI-10727-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/24/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 18, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 6, 2017. Claimant participated. CTS Language Link interpreter ID number 9827 interpreted on claimant's behalf. Employer participated through human resources manager Nicholas Aguirre. The employer offered Employer Exhibit 1 into evidence. Claimant objected to Employer Exhibit 1. Claimant's objection was overruled and Employer Exhibit 1 was admitted into evidence. Official notice was taken of the administrative record, including claimant's benefit payment history, with no objection.

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 was employed full-time as a general laborer from December 10, 2014, and was separated from employment on September 22, 2017, when he was discharged.

The employer has a written policy, if an employee violates a major policy it results in automatic discharge. Job refusal is considered a major policy violation. Claimant was aware of the policy.

On September 19, 2017, claimant's coworker, Rob Robemayer, was out on vacation. The employer assigned claimant Mr. Robemayer's cleanup/janitorial job duties (push a barrel cart around, empty trash baskets in offices; sweeping; and folding gloves). The employer moves employees around when an employee is absent to cover the absent employee's job duties. Mr. Robemayer's cleanup/janitorial job duties are not a part of claimant's normal job duties. On September 19, 2017, claimant refused to perform the assigned cleanup/janitorial job duties. The employer met with claimant and a union representative regarding claimant's refusal to perform the assigned job duties. Claimant told the employer he refused to perform the assigned cleanup/janitorial job duties because these job duties would hurt his hands. The employer explained to claimant what the cleanup/janitorial job duties involved. The employer also gave

claimant tips to limit the impact/stress on his hands. Mr. Aguirre testified that the cleanup/janitorial job duties the employer assigned claimant were less stressful on his hands than claimant's normal job duties (using a knife on the cutting floor). Mr. Aguirre testified the cleanup/janitorial job duties are usually reserved for senior employees. Claimant was not under any work restrictions on September 19, 2017. The employer explained to claimant that refusing to perform the cleanup/janitorial job duties would be considered a major policy violation. Claimant continued to refuse to perform the assigned job duties. The employer then suspended claimant without pay until it made a determination about his employment status.

On September 22, 2017, the employer met with claimant and a union representative with the intention on giving claimant a last chance agreement/final written warning. During the meeting, the employer explained to claimant that any future violation would result in immediate termination. The employer again assigned claimant to perform the cleanup/janitorial job duties. Claimant continued to refuse to perform the assigned cleanup/janitorial job duties. During the meeting, claimant's union representative gave him advice on how to perform the cleanup/janitorial job duties. Claimant's union representative told claimant the assigned cleanup/janitorial job duties would only be for two days, until Mr. Robemayer returned. Claimant continued to complain that his hands hurt, but did not present any work restrictions to the employer or at this hearing. Mr. Aguirre testified the employer understood claimant that he wanted to continue perform his normal job duties, which were more stressful on his hands than the job duties the employer was assigning him. Claimant continued to refuse to perform his assigned job duties. The employer then discharged claimant for refusing to perform the assigned work. The employer had work available for claimant had he been willing to perform his assigned job duties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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).

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).

The employer has presented substantial and credible evidence that on September 19 and 22, 2017, claimant refused to perform the cleanup/janitorial job duties that the employer assigned him. Claimant's argument that he refused to perform the assigned job duties because his hands hurt is not persuasive. The employer assigned claimant the cleanup/janitorial job duties because an employee was absent. An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. ___-___/___-___, Iowa Ct. App. filed ___, 1986). The employer presented substantial and credible evidence that although the cleanup/janitorial job duties were not claimant's normal job duties, these job duties are considered light duty and would be less stressful on claimant's hands than his normal job duties. It is also noted that claimant was not under any work restrictions on September 19 or 22, 2017 that would have precluded him from performing the assigned cleanup/janitorial job duties. The employer also provided claimant with tips on how to perform

the assigned job duties with even less impact on his hands, but he continually refused to perform the assigned work. On September 19, 2017, the employer suspended claimant for refusing to perform his assigned job duties. Claimant's suspension clearly warned him that his job was in jeopardy if he continued to refuse to perform his assigned job duties or provide a doctor's note that precluded him from performing the job duties. On September 22, 2017, the employer gave claimant the opportunity to return to work if he was willing to perform his assigned job duties; however, claimant continued refused to perform his assigned job duties and he was discharged. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has presented substantial and credible evidence that claimant continually refused to perform his assigned job duties after having been warned. This is disqualifying misconduct. Benefits are denied.

DECISION:

The October 18, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs