

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VAJGRT, MICHAEL, A**  
Claimant

**APPEAL NO. 10A-UI-17431-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 11/21/10**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 15, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 2, 2011. The hearing was scheduled to start at 2:00 p.m. The administrative law judge began contacting the parties for the hearing at 1:59 p.m. Claimant participated. The employer provided the name of a representative, Jenny Mora, and a number at which the representative could be reached for the hearing, 641-752-9309. But Ms. Mora was not available at the designated number at the time the hearing. The administrative law judge made two attempts to reach employer representative for the hearing. On both attempts the administrative law judge may contact with the receptionist, who forwarded the call to the human resources department. In connection with both phone calls to the employer, the administrative law judge was then left on hold and extended period with no one from the employer getting back on the line. The administrative law judge then proceeded with the hearing, with the claimant participating, and the hearing record closed at 2:24 p.m., with no contact from the employer to indicate that the employer was available to participate in the hearing. The employer failed to make itself available for the hearing.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Vajgrt was employed by Swift Pork Company as a full-time production worker/assistant line supervisor from 2007 until November 12, 2010, when Employment Manager Jenny Mora discharged him based on an incident involving his operation of a handjack cart. Mr. Vajgrt had been assisting a coworker with moving material and the work required use of a motorized handjack cart. Mr. Vajgrt was responding to two supervisors who were directing him to move material quickly to facilitate production. At one point, a couple of maintenance crewmembers placed an A-frame step-ladder over the tines of the stationary handjack cart. Mr. Vajgrt asked the maintenance employees to move the ladder so he could retrieve the handjack cart. They

provided a vulgar response. Mr. Vajgrt had to make a quick decision as to whether to pull the cart out from under a ladder or push the cart the rest of the way under the ladder so that he could continue with his work duties. He decided to push the cart under the ladder and continued with his work. The two maintenance employees were up on the ladder. No one was harmed. Later in the day, Mr. Vajgrt was summoned to a meeting and was sent home with instructions to return the following day. The next day, the employer notified Mr. Vajgrt that he was discharged from the employment. Mr. Vajgrt had received a reprimand at some point during the prior year concerning his operation of the handjack cart.

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

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether

the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party’s power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party’s case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer failed to make itself available for the hearing and thereby failed to present any evidence to support an allegation that Mr. Vajgrt was discharged for misconduct in connection with the employment. The evidence in the record establishes that Mr. Vajgrt had to make a quick decision to facilitate production and made a good-faith error in judgment with regard to moving the handjack cart from under the ladder that had been erected over the cart by the maintenance crew. Mr. Vajgrt’s good-faith error in judgment was not misconduct and would not disqualify him for unemployment insurance benefits. Mr. Vajgrt was discharged for no disqualifying reason. Accordingly, Ms. Vajgrt is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits paid to Mr. Vajgrt.

**DECISION:**

The Agency representative’s December 15, 2010, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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