

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GERALD W SAPP
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A-UI-03971-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 19, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on April 1, 2021. Claimant Gerald W. Sapp participated. Employer did not register for the hearing and did not participate.

ISSUE:

Did claimant voluntarily leave the employment without good cause attributable to the employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's evidence: Claimant worked as a full time maintenance worker from February 2020 until his employment ended on May 22, 2020.

On May 15, 2020, claimant attempted to clock in after his lunch break but the time clock machine did not work. He notified the supervisor in charge about the issue and he said he would take care of it. Claimant was unable to clock out of work that night. On May 16, 2020, claimant encountered the same issue with the time clock machine. Claimant left work both days around 7:15 p.m., after the end of his shift. When he arrived at work the next morning, claimant's ID badge did not work. When a guard brought him into his supervisor, claimant learned he was being placed on unpaid leave pending an investigation since it appeared he did not return to work after lunch for two days. Claimant explained to his supervisor about the time clock not working, but he was sent home.

On May 19, 2020, a hearing was held as part of the investigation. Claimant testified that he was present both days at work and provided the name of a witness who could support that he worked his entire shift both days. On May 22, 2020, claimant received a termination letter from employer. No reason was given for the discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, claimant did not have an intention to quit his employment. His employment ended when claimant terminated it. Thus, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined.

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).

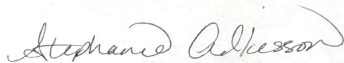
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant testified he was present at work for his full shifts on May 15, 2020 and May 16, 2020. No evidence was presented that claimant was absent from work. No evidence was presented that claimant received any warnings about his conduct or that he was careless or engaged in a pattern of negligence. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The January 19, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Stephanie Adkisson
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April 6, 2021
Decision Dated and Mailed

sa/kmj