

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TEWOLDE H SEYUM

Claimant

APPEAL 17A-UI-12305-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 11/05/17

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 27, 2017, (reference 01) unemployment insurance decision that denied benefits based on his discharge for insubordination. The parties were properly notified of the hearing. A telephone hearing was held on December 20, 2017. The claimant participated and testified with the assistance of a Tigrinya interpreter from CTS Language Link. The employer could not be reached at the telephone number provided and therefore did not participate.

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 production line with on the scale/make weight line. Claimant worked for this employer from December 7, 2015, until this employment ended on November 6, 2017, when he was discharged.

On November 6, 2017, claimant was asked by his supervisor to go work on another line where he had been trained and previously worked. Claimant explained to his supervisor that he had been taken off that line when he suffered a work-related injury to his hand on the line and was still unable to do the work on that line due to ongoing pain in his hand. Claimant was told the employer's nurse had cleared him to work on that line and he needed to go do that work or be discharged. Claimant continued to explain that working on the line caused him too much pain and he could not do the work. Claimant was then discharged from employment. Claimant testified he had reported his injury and ongoing pain to the employer on multiple occasions, but they had only allowed him to see the on-site nurse and had not scheduled an appointment with the worker's compensation doctor. Claimant further testified the only reason he would not perform the work assigned was because of the extreme pain it caused in his hand.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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).

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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

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 assess points or impose discipline up to or including discharge for the incident under its policy. 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, employer incurs potential liability for unemployment insurance benefits related to that separation.

Insubordination does not equal misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa App. 1985). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. (Refusal to pick up mail at a place where racial harassment occurred.) *Woods v. Iowa Dep't of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982). The Iowa Court of Appeals has previously found an employee's refusal to push a cart he, in good faith, believed was too heavy, just days after suffering a back injury at work, was found not to have engaged in misconduct. *Woodbury Cnty. v. Emp't Appeal Bd.*, No. 03-1198 (Iowa Ct. App. filed April 14, 2004).

In this case, claimant refused to work in the area he was assigned because he did not believe he could do so, given his previous injury, and his ongoing pain from this injury. Claimant's belief that he could not perform the work assigned due to the pain he was experiencing was in good faith and reasonable given the circumstances. Inasmuch as claimant had a reasonable, good faith reason for refusing to do the assigned work, the employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

DECISION:

The November 27, 2017, (reference 01) 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 shall be paid to claimant.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs