

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB C BIAR
Claimant

SWIFT & COMPANY
Employer

APPEAL NO: 10A-UI-02824-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/24/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 15, 2010 reference 01, that held he was discharged for misconduct on January 22, 2010, and benefits are denied. A telephone hearing was held on April 7, 2010. The claimant participated. Cheryl Hughlette, HR Manager, participated for the employer. Employer Exhibits 1-8 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began work on February 16, 2009, and last worked for the employer as a full-time production worker on the cut floor on January 22, 2010. The employer extended the claimant's probationary employment period in order to qualify him for continuing employment. Claimant received progressive discipline from a written warning on June 9, 2009 to a final warning to December 17, 2009, for various policy violations. Either the claimant or a Union representative on his behalf signed for the discipline warnings.

On January 22, 2010, a Quality Assurance person requested the claimant to exchange his "green" work gloves, and he refused. Supervisor Feeback asked the claimant for the gloves and he refused. The claimant was discharged for the glove exchange refusal in light of progressive discipline. Neither the claimant nor the Union on his behalf filed any grievance to keep his job or from any of the written warnings.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on January 22, 2010, for repeated warning-violations of company policy.

The employer extended the claimant's probation to qualify him for employment. The claimant's statement he grieved two of the disciplinary warnings is not credible based on the employer witness denial and no personnel record of any grievance. The claimant admitted neither he nor the Union filed any grievance to save his job, which supports the conclusion the claimant committed the policy violations as written by the employer. The repeated policy violation-warnings in light of the refusal to exchange gloves, constitutes job disqualifying misconduct.

DECISION:

The department decision dated February 15, 2010 reference 01, is affirmed. The claimant was discharged for misconduct on January 22, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs