

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA S ALDZA LOYA
Claimant

APPEAL NO. 11A-UI-15488-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 10/30/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Swift Pork Company filed a timely appeal from a representative's decision dated November 23, 2011, reference 01, that held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on January 3, 2012. The claimant participated personally. The employer participated by Mr. Aurelilando Diaz, Human Resource Manager. Exhibit One was received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Donna Aldaz Loya was employed by the captioned employer from March 17, 2011 until October 27, 2011 when she was discharged from employment. Ms. Aldaz Loya was employed as a full-time production worker and was paid by the hour. Her immediate supervisor was James Cordel.

The claimant was discharged when the employer concluded that Ms. Aldaz Loya had not fully reported a previous medical condition on her application for employment.

Leading up to her termination Ms. Aldaz Loya had been visiting the company nurse about pain in her arms and shoulders that the claimant believed was caused by a new job assignment. While being questioned by the nurse Ms. Aldaz Loya asserted that perhaps her pain was caused in part by "becoming older and arthritis." The employer considered this statement as an indication that the claimant had suffered from arthritis in the past and had not reported to the employer on her application for employment medical documentation. The claimant was therefore discharged from employment.

The claimant has not previously suffered from arthritis and attempted to answer all questions on her application for employment and medical questionnaire truthfully. The claimant's statement concerning "arthritis" was made in the nature of a rhetorical statement.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 insurance benefits. 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).

The evidence in the record establishes that the claimant did not intentionally provide false statements to her employer on her previous application for employment and medical history. The claimant had not suffered from arthritis in the past and the claimant had only made a passing reference in a rhetorical manner to the possibility of "arthritis" by stating that she was getting older and perhaps that was a cause of a portion of her pain.

The evidence in the record does not establish intentional disqualifying misconduct on the claimant sufficient to warrant the denial of unemployment insurance benefits. While the

employer may have made a sound decision to terminate the claimant based upon its business decision, the evidence does not establish disqualifying misconduct.

DECISION:

The representative's decision dated November 23, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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