

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEAN NOEL
Claimant

APPEAL NO: 13A-UI-04795-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 02/17/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Sean Noel (claimant) appealed an unemployment insurance decision dated April 19, 2013, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Swift Pork Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 29, 2013. The claimant participated in the hearing. The employer participated through Luis Meza, Human Resources Supervisor. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from August 20, 2012 through January 23, 2013 when he was discharged for violation of his last chance agreement. He signed the last chance agreement on December 19, 2012 which was a final written warning and it advised him that any occurrence or report of inappropriate conduct or other behavioral incident would be a violation of the agreement. However, the claimant was also advised he was held responsible for following all policies and standards expected of all employees.

The claimant was discharged on January 23, 2013 after he walked away from his work site without authorization and left his job unattended in violation of company policy. He used the restroom and went to the cafeteria for a short period of time even though it was not his scheduled break time. Employees are not allowed to go to the cafeteria unless on a scheduled break. The claimant's supervisor could not find him for over ten minutes. The employer has approximately 2300 employees and due to safety reasons, employees are required to obtain permission and sign in and out when leaving their work sites.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on January 23, 2013 for violation of his Last Chance Agreement signed on December 19, 2012. He knew his job was in jeopardy and violated company policy by leaving his work site unattended and without authorization. While the claimant did have the right to go to the restroom, he had no reasonable explanation for disregarding established procedures. Additionally, the claimant went to the cafeteria outside of his scheduled break which is another policy violation. The employer has policies to protect its massive work force and this requires all employees to follow those rules. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 19, 2013, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/tll