

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DUDLEY C BARKALOW**  
Claimant

**APPEAL NO. 07A-UI-10559-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 10/14/07 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 7, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 3, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Tony Luse participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer from January 10, 2007, to October 12, 2007. He started working as a mechanic in the maintenance department in August 2007. The claimant was informed and understood that under the employer's work rules, employees were required to lock out and tag out the power supply to any equipment before working on it.

On October 12, 2007, there was a conveyor belt that was done and the claimant was one of the workers assigned to repair the machine. The claimant had never worked on the conveyor before and was unsure where to lock out and tag out the equipment. He asked one of the other mechanics to let him know where the lock out-tag out area was. The claimant was in the process of going to lock out and tag out the machine when a supervisor confronted him about not having his lock and tag on the machine. The claimant had performed no service on the machine at the time of the supervisor's confronting. The claimant was suspended and then discharged on October 18, 2007, for alleged violation of the lock out-tag out policy.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly that he did not violate the lock out-tag out policy because he was in the process of locking and tagging out the equipment and had not performed any service on the machine.

**DECISION:**

The unemployment insurance decision dated November 7, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css