

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAKE M WALLEN

Claimant

SWIFT PORK COMPANY

Employer

APPEAL 20A-UI-01184-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/05/20

Claimant: Respondent (2)

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

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Employer filed an appeal from the January 29, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 25, 2020, at 11:00 a.m. Claimant did not participate. Employer participated through Vicky Cervantes, Human Resources Manager. Employer's Exhibits 1 – 9 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

Whether claimant was overpaid benefits.

Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time general laborer from August 19, 2019 until his employment with Swift Pork Company ended on December 16, 2019. Claimant worked 13 days on and one day off from 11:00 p.m. until 7:00 a.m. Claimant's direct supervisor was Tim Quigley, Maintenance Supervisor.

Employer has a policy that prohibits employees from leaving the premises during their 15-minute breaks, unless they inform their direct supervisors and clock-out. The policy is outlined in the employee handbook. Claimant received a copy of the handbook. The policy is necessary for safety reasons. If there is an emergency, all employees must be accounted for, which cannot be done if employees leave the premises without informing their supervisor and clocking out.

On November 30, 2019, claimant left the premises for his 15-minute break without informing his supervisor or clocking out. On December 1, 2019, employer warned claimant that he may be

discharged if he left the premises for his 15-minute break without informing his supervisor and clocking-out again. On December 10, 2019, claimant left the premises for his 15-minute break without informing his supervisor or clocking out. When claimant returned to work after his break, claimant's supervisor told claimant to report to human resources at 6:30 a.m. before leaving work for the day. Claimant did not report to human resources and left work at 7:12 a.m. On December 10, 2019, employer informed claimant via telephone that he was suspended pending an investigation. On December 16, 2019, employer discharged claimant for policy violation and insubordination.

The administrative record reflects that claimant has neither filed for nor received unemployment insurance benefits, since filing his original claim effective January 5, 2020. Employer provided a termination form, human resources action records and copies of emails regarding claimant's infractions. Employer did not provide a copy of the rule or policy that claimant was discharged for violating. Employer provided the name and telephone number of an employee to be contacted by the fact-finder for rebuttal; however, the employee was not available when the fact-finder called.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

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 impose discipline up to or including discharge for the incident under its policy. 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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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 Ct. 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. *Woods v. Iowa Dep't of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982).

Claimant violated a known company policy nine days after receiving a verbal warning for the exact same conduct. Claimant knew or should have known that continued violation of the policy would jeopardize his employment. Claimant's policy violation constitutes job-related misconduct and is substantial in that it created a potential safety concern for employer. Employer's request for claimant to report to human resources about the policy violation was reasonable. Claimant did not report to human resources alleging that he forgot. There is no good faith or good cause reason for claimant's failure to report to human resources. Claimant's failure to report to human resources as requested by employer constitutes insubordination. Claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

Because no benefits were paid to claimant, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The January 29, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/scn