

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JESUS J RUIZ**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 17A-UI-01970-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/29/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 13, 2017, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on March 15, 2017. The claimant participated personally and through a Spanish interpreter with CTS Language Link. The employer participated through Kristy Knapp, human resources/FMLA coordinator. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a production worker and was separated from employment on January 24, 2017, when he was discharged for falsification of FMLA paperwork.

When the claimant was hired, he received training and orientation, as well as training on the employer's policies which prohibit falsification of any document such as medical paperwork, timekeeping records, etc. The training was conducted in both English and Spanish. The claimant denied being trained. The employer stated the claimant signed off an acknowledgement of orientation items, that was presented in Spanish.

The claimant was discharged for a single incident of falsification, related to a request for FMLA. The claimant had historically made several FMLA requests to the employer, while employed since 2014, and the employer had retained copies of documentation previously submitted. The final incident occurred upon the claimant requesting FMLA paperwork on November 19, 2016, for an intended extended absence to go to Mexico for medical care. The claimant was

furnished FMLA paperwork to give to his doctor and return to the employer. The claimant did not perform work between November 19, 2016 and January 23, 2017, when he returned to the employer and presented completed FMLA paperwork, purportedly from his doctor in Mexico.

The employer questioned the authenticity of the document based on several identifiable issues. The first issue was that at the top of the FMLA form was the name and contact information furnished by the employer of its FMLA coordinator. In the documentation returned on January 23, 2017, the claimant's form listed the name of a prior FMLA coordinator who had not been with the employer for a period of time, (and predated Ms. Knapp), but who was listed on previously submitted FMLA paperwork by the claimant. Then the employer noticed in nine places, the last digit of the year had been marked over, with a noticeable and different handwriting, to reflect a "7" (as in 2017). When the employer compared the presented documents that appeared to be marked up to reflect 2017, they were identical to documents previously submitted by the claimant in his prior FMLA request. When the claimant was questioned by Rogelio Bahena, he neither admitted nor denied submitting falsified or altered documents. His explanation for the documents was that "things were hectic, and my wife put in the wrong documents". The claimant did not respond to questions about why there were "wrong documents" or who would have altered documents for his wife to mix up, when giving them to him to bring to work. The claimant repeatedly stated his wife was responsible for the incorrect documents being submitted. He was subsequently discharged.

#### **REASONINGS AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for reasons that constitute misconduct, and benefits are denied.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witness and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for a current act of work-connected misconduct as defined by the unemployment insurance law.

In this case, the claimant was discharged for a single incident of falsification of presented FMLA documents, in which the employer stated the claimant presented identical documents that he had previously submitted, with the exception of changing the last digit of the year, to reflect 2017. The employer compared the FMLA documents presented on January 23, 2017 to previously submitted FMLA paperwork by the claimant, and initially observed the name of the FMLA coordinator listed at the top of the paperwork was the name of the prior coordinator, and to whom the claimant had previously submitted FMLA paperwork before Ms. Knapp assumed the role. Further, Ms. Knapp credibly testified that the document was clearly altered based on the different handwriting that showed the marked up "7s" to reflect 2017.

The claimant repeatedly blamed his wife for the "wrong documents" submitted on January 23, 2017, even though he was the person who submitted the documents to the employer on his behalf, and therefore responsible for ensuring they were accurate. Throughout the hearing, the claimant was asked why altered documents even existed, or how they became altered (and by whom) and the claimant was vague in response, repeating that his wife gave him the "wrong documents" to return to the workplace. Even in the absence of the employer presenting the claimant's returned FMLA paperwork, side by side, with previously submitted FMLA paperwork,

the administrative law judge found the employer's testimony to be more logical and credible than the claimant. Regardless of who was responsible for altering the documentation (the claimant, his wife, or someone else), the claimant was ultimately responsible for the documents he presented to the employer to support his leave of absence. The claimant failed to offer a persuasive explanation about how or why he submitted clearly altered FMLA paperwork to his employer, which mirrored previous FMLA paperwork he had submitted. The administrative law judge is not persuaded the submission of the documentation was due to a miscommunication or misunderstanding.

Honesty is a reasonable, commonly accepted duty owed to the employer. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

**DECISION:**

The February 13, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs