

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MELANIE CLAY

Claimant

APPEAL NO: 18A-UI-11673-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 10/28/18

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 21, 2018, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 17, 2018. The claimant participated in the hearing. Rogelio Bahena, Human Resources Generalist, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time operations supervisor for Swift Pork Company from January 7, 2015 to October 26, 2018. She was discharged for work performance issues.

On September 4, 2018, the claimant received a written warning after her manager shut down the two lines she was running due to housekeeping issues, such as, product falling to the floor at transfer areas and boxes with the USDA label still attached on the floor and packaging film on the floor. The claimant worked with the janitor and told him several times he needed to clean up the bacon at the transfer areas but he refused to consistently perform that task.

The employer prepared a performance improvement plan (PIP) for the claimant September 14, 2018, but the claimant denies signing the document or receiving a copy of it. The plan detailed the issues the employer had with the claimant's performance, its expectations, and how to correct the problems. The employer conducted a 30 day review on October 23, 2018, but because the claimant was not aware of the PIP she did not know the employer was reviewing her performance. She was called to the office that day and believed it was because an employee was unhappy with her. On that date, the claimant was trying to get her lines going and get to the office to discuss the problem with her subordinate. She asked the product manager to finish setting up the line while she was gone. When she returned she was preparing to change the line over to a different product and observed the line was running the

wrong product. By that time, three pallets and 294 boxes of bacon had to be recalled from within the plant and cut and repackaged, all at a loss for the employer. The employer suspended the claimant October 23, 2018, and told her to call human resources October 26, 2018, to learn the status of her job. The claimant called and was told corporate made the decision to terminate the claimant's employment October 26, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

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).

The employer has the burden of proving disqualifying misconduct. *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).

While the claimant had some problems in running her lines, she performed the job to the best of her ability. She tried to work with the crew on the housekeeping issues that resulted in the September 4, 2018, written warning but had difficulty getting the staff member responsible for cleaning up product on the floor to do his job effectively and that staff member was eventually moved to another position, due to lack of performance.

The claimant credibly testified she never received or signed a performance improvement plan and did not know the meeting with human resources October 23, 2018, was a 30 day review of the goals of that plan. Because she never received the PIP she was also unaware her job was in jeopardy.

The final incident occurred when the claimant was trying to get to human resources for a meeting she thought involved a disgruntled employee. She asked the product manager to finish starting the line up while she was gone and the product manager did so but ran the wrong product. The claimant caught the error when she returned from human resources but three pallets of product had run by then, costing the employer time and money.

Although the claimant's work performance did not meet the employer's expectations on at least two occasions, there is no evidence the claimant's actions were intentional job misconduct as that term is defined by Iowa law. The employer has not met its burden of proving disqualifying job misconduct. Therefore, benefits are allowed.

DECISION:

The November 21, 2018, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn