

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN IRVING

Claimant

APPEAL NO: 16A-UI-09686-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 08/07/16

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 25, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 22, 2016. The claimant participated in the hearing. The employer provided a telephone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 July 25, 2005 to August 29, 2016. He was discharged for responding verbally to a subordinate's threat of violence against him.

On August 17, 2016, a subordinate did not complete a task and the claimant's supervisor instructed him to take disciplinary action against the subordinate. When the claimant issued the subordinate a written warning the subordinate said he was "going to kick (the claimant's) ass outside after work" and the claimant stated, "I'll punch you in the face and you won't get up." The claimant then walked away and returned to his office to complete paperwork and finish his other tasks for the day. At 7:00 a.m. the employer walked the claimant out of the plant. Other employees heard the claimant's response to the subordinate but did not hear the subordinate's initial comment to the claimant.

The claimant had separated from his wife and had been living in his truck for the previous three weeks because his paycheck was going into his wife's account. He did not have a phone. Some of the supervisors at the plant had given the claimant money to live on because they were aware of his situation. He had requested and been granted vacation the last two weeks of August 2016 but a few days prior to the scheduled start time of his vacation the employer

notified him he could only have two days off and he needed to return to work August 17, 2016. After sleeping in his truck for three weeks the claimant fell asleep at work on August 17, 2016.

The claimant received a written warning August 10, 2016, for inaccurate paperwork but claimant fought the warning and proved his paperwork was correct. The claimant does not believe the employer removed the warning however.

The claimant was unsure of his job status after the employer walked him out of the plant and was not sure if he was on vacation or if his employment was terminated. Several days later the claimant heard the employer wanted to talk to him but had been unable to reach him because he did not have a phone. The claimant went in and talked to human resources August 29, 2016, and was notified his employment was terminated.

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 § 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).

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).

The claimant was going through a very difficult personal situation when the events of August 17, 2016, occurred at work. He was effectively homeless, broke and did not have a phone. Other supervisors who were aware of his situation donated to him financially. During the course of one day in an 11-year tenure with the employer, he fell asleep and then responded inappropriately to a subordinate's threat of physical force against him but walked away from the confrontation.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The testimony provided by the claimant shows an isolated incident of poor judgment. Evidence of one bad day in 11 years of employment does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits are allowed.

DECISION:

The August 25, 2016, reference 01, decision is reversed. 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/pjs