

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERRY ECHOLS
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A-UI-09628-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/07/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On April 5, 2021, claimant, Terry Echols, filed a timely appeal from the March 25, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that the employer, Swift Pork Company, discharged claimant for sleeping on the job. The parties were properly notified about the hearing held by telephone on June 15, 2021. The claimant participated personally. The employer participated through HR Manager Patty Taylor. Employer's Exhibits 1 through 8 were admitted to the record. A relevance objection by claimant regarding Employer's Exhibit 8 was overruled.

ISSUE:

Did the employer discharge the claimant for 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 plasma room operator beginning on February 24, 2020, and was separated from employment on February 4, 2021, when he was discharged.

Claimant worked third shift in the plasma room. He was one of few people who worked in the area, and the only person assigned to his job duties during his shift. If he needed to step away from his job duties, he had to seek out coverage and notify his supervisor before doing so.

On January 31, 2021, claimant finished his shift at 9:00 a.m. He felt unwell the night before and was living with three people who had recently tested positive for COVID-19. Accordingly, he went to the doctor on January 31, 2021, to get a test. The doctor excused claimant from work until February 5, 2021, to await the results of his test. On February 1, 2021, claimant went to work to deliver the doctor's note. He was not allowed onsite because of the potential for COVID exposure, but his supervisor took a copy of the doctor's note.

On February 2, 2021, then-HR Manager Vicki Cervantes called claimant and told him, because he worked in an isolated area of the plant, he could double mask and come back to work.

Claimant told her that he would prefer to wait for his test results. Then, on February 4, 2021, claimant received a call from someone with the union saying the employer had a picture of claimant sleeping on the job and he had been terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa

Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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, 394–95 (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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant’s version of events to be more credible than the employer’s recollection of those events. The employer’s explanations regarding the final incident were unclear and inconsistent. The employer alleged that claimant was discharged for sleeping on the job on February 4, 2021, but provided no evidence that claimant was working on February 4, 2021. Furthermore, the picture provided as Employer’s Exhibit 3, is not clear enough to identify claimant both because of the picture quality and because the face of the person in the picture is not visible. The timestamp on the picture indicated it was taken around 1:00 p.m. on February 4, 2021, which claimant credibly testified would have been entirely outside of his normal working hours, even if he had been released to work. The employer did not provide evidence such as time clock entries or badge swipes for claimant for February 4, 2021, and claimant clearly and consistently testified that he was not at work that day because he was awaiting the results of his COVID-19 test. Finally, employer could provide no explanation for the identified inconsistencies.

While sleeping on the job can constitute job-related misconduct under some circumstances, the employer in this case has not carried its burden of establishing that claimant engaged in job-related misconduct. It has not clearly established that claimant engaged in the conduct for which he was terminated, or that he did so knowingly, with disregard for the employer’s interests. Benefits are allowed.

DECISION:

The March 25, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Alexis D. Rowe
Administrative Law Judge

June 28, 2021
Decision Dated and Mailed

ar/lj