

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAUN T TAYLOR

Claimant

APPEAL NO. 12A-UI-01844-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 01/01/12

Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the February 13, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on March 12, 2012. Claimant did not respond to the hearing notice instructions and did not participate. Employer participated through human resources assistant manager Javier Sanchez. The administrative law judge took judicial notice of the administrative record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker from November 7, 2011 and was separated from employment on January 4, 2012. His last day of work was December 30, 2011, when he walked off the job twice after being instructed to watch a corner of the line so boxes did not get jammed up. He left the work area without notice to or permission from his supervisor and was found smoking outside. He did not tell his supervisor or human resources that he refused to do the job because there was no lock-out option in place and he believed it to be unsafe. He was instructed to return at 7 a.m. on January 3, 2012, but he did not return until January 4, when he was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

871 IAC 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The employer has presented substantial and credible evidence that claimant failed twice in the same shift to follow the instruction of his supervisor and left the work area without notice permission. Claimant's fact-finding interview assertion that he had safety concerns is not credible, since he did not raise those with his supervisor or human resources. Claimant's conduct as described and failure to report back to work on January 3 as directed rose to the level of disqualifying misconduct. Benefits are denied.

DECISION:

The February 13, 2012 (reference 01) decision is reversed. 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. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw