

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GARANG A ATEM**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 20A-UI-01723-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/26/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On February 25, 2020, Garang A. Atem (claimant) filed an appeal from the February 20, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination Swift Pork Company (employer) discharged him for failure to follow instructions in the performance of his job. The parties were properly notified about the hearing. Initially, the hearing was scheduled to be held in-person in Des Moines, Iowa; however, due to public health concerns, a telephone hearing was held on March 18, 2020. The claimant participated personally. The employer participated through Vickey Cervantes, Human Resources Manager. The Employer's Exhibits 1 through 3 were admitted into the record.

**ISSUE:**

Was the claimant discharged 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 General Laborer beginning on August 5, 2019, and was separated from employment on January 31, 2020, when he was discharged. The employer has a policy that promotes a best work environment by requiring professional conduct from its employees. The policy also prohibits insubordination.

The claimant's last day worked was January 24. The claimant returned late from a break. Ronato Gonzalez, Production Supervisor, asked the claimant to go with him to Human Resources. When they got to the office, Gonzalez had him wait to speak with Vickey Cervantes, Human Resources Manager. The employer has two computers in Human Resources for employees to check payroll and paystubs during their break times. While waiting for Cervantes, the claimant decided to print his most recent pay stubs from the computers available to the employees.

Shortly after getting on the computers, Gonzalez asked the claimant to join Cervantes in her office. The claimant told Gonzalez to wait as he was busy printing his check stubs. Gonzalez repeated his request multiple times and the claimant continued to refuse. Eventually, Cervantes

asked the claimant to step into her office and the claimant again refused because he needed a minute.

Eventually, the claimant entered Cervantes' office. Cervantes asked the claimant why he did not immediately follow their directives to report to her office. He replied, "I don't give a fuck, do what you've got to do." (Cervantes Testimony.) Cervantes then asked for his employee identification so she could obtain some information to start the formal discipline process. The claimant threw the badge at her and left. Cervantes then called security who found the claimant gathering his personal items and escorted him out of the building as he was suspended for the conduct that occurred. On January 31, the claimant was discharged for his insubordinate behavior.

### **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. Benefits are denied.

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 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). 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). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has interests in maintaining a professional work environment and the ability to discipline employees. The claimant's conduct, including insubordination by failing to report to the office as directed, leaving the meeting before it was over, and use of profanity, was a deliberate disregard of the employer's interests and his conduct was outside the reasonable conduct an employer has the right to expect of its employees. The claimant's conduct is disqualifying even without prior warning. Benefits are denied.

**DECISION:**

The February 20, 2020, 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.

A handwritten signature in blue ink that reads "Stephanie R. Callahan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

---

Stephanie R. Callahan  
Administrative Law Judge

March 26, 2020  
Decision Dated and Mailed

src/scn