

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**FRANCISCO AGUILERA ROSILES**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL NO. 20A-UI-02520-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/01/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-1 – Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 19, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 22, 2020. Claimant participated and had attorney Tristan Irvin Pollard. Employer did not answer when called at the number registered and did not participate. Interpretive services were provided by CTS Language Link.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 25, 2020.

Employer discharged claimant on February 4, 2020 because employer had no work for claimant that he could do with his restrictions given to him by his doctor.

Claimant was injured at work in late October, 2019 lifting boxes that were very heavy. He went to the company doctor. The company doctor gave him a restriction that he was not to lift over 20 pounds. This restriction lasted for two weeks.

Claimant continued to experience pain in his stomach area. He went to his own doctor on January 25, 2020 as he had not received any additional help from the company doctor. His doctor had him off from work for a week. When he went back to the doctor on February 3, 2020, the doctor noted a probable hernia and restricted claimant to a 5 pound weight restriction until further notice. Claimant took this restriction to employer. Employer stated that they had no work for claimant and terminated him.

At all times claimant was able to work in a capacity that would not run against his restriction.

## REASONING AND CONCLUSIONS OF LAW:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. 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. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the

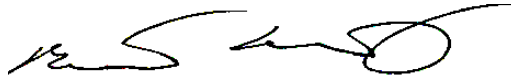
provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant suffered an injury at work that was misdiagnosed by the company doctor, and only correctly diagnosed when claimant went to his own doctor. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated March 19, 2020, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



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Blair A. Bennett  
Administrative Law Judge

April 23, 2020  
Decision Dated and Mailed

bab/scn