

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**YOLANDA M NICHOLS**  
Claimant

**APPEAL NO. 10A-UI-02048-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 01/03/10**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 28, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 25, 2010. Claimant participated. Aaron Vawter, Human Resources Coordinator, represented the employer. Exhibits One through Five were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Yolanda Nichols was employed by Swift & Company, doing business as JBS as a full-time production worker from 2003 until January 8, 2010, when Aaron Vawter, Human Resources Coordinator, discharged her from the employment.

The final incident that triggered the discharge occurred on January 8, 2010, when Ms. Nichols mislabeled some meat product “combos.” Mr. Nichols’ job duties included affixing the proper product label. Ms. Nichols admitted her error. Prior to the final incident, the employer had most recently reprimanded Ms. Nichols in August 2009. On August 7, 2009, the employer reprimanded Ms. Nichols for allegedly mislabeling product and giving rise to a claim by Oscar Meyer. The employer lacks additional details regarding this incident. On August 25, 2009, the employer reprimanded Ms. Nichols after she accidentally mislabeled product. The employer had also reprimanded Ms. Nichols in June 2009 for allegedly failing to follow the instructions of the supervisor.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer largely lacked personal knowledge of the incidents leading to the discharge and failed to produce testimony from those persons with personal knowledge of the incidents in

question. The employer had the ability to present more direct and satisfactory evidence. The weight of the evidence fails to establish anything other than isolated instances of ordinary carelessness or negligence. The evidence establishes no intentional misconduct and no pattern of carelessness/negligence so recurrent to indicate willful or wanton disregard of the employer's interests. The evidence establishes that Ms. Nichols performed the work to the best of her ability, but occasionally made unintentional errors. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Nichols was discharged for no disqualifying reason. Accordingly, Ms. Nichols is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Nichols.

**DECISION:**

The Agency representative's January 28, 2010, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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