

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GUADALUPE GARCIA
Claimant

APPEAL NO: 12A-UI-05318-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 03/11/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's April 30, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing with her attorney, Eric Updegraff. Aureliano Diaz, the human resource manager, appeared on the employer's behalf. Ana Pottebaum interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2008. She worked full time first shift production. The claimant has worked at a number of jobs and received warnings for unsatisfactory work performance. As early as July 2010 and again in January 2011, the claimant had problems keeping up with work in the ham bone department. The claimant received a warning In March 2011 for failing to trim meat off bones.

At some point during her employment, the claimant received a work-related injury. As a result of the injury, she had work restrictions. On January 27, 2012, supervisors observed the claimant while she worked. They determined that after she realized she was being watched, she did the job satisfactorily. When she had not known she was being watched, the supervisors concluded the claimant intentionally failed to do her assigned job satisfactorily. The employer suspended the claimant for performing unsatisfactory work on January 27, 2012.

When the claimant returned to work on February 3, 2012, she signed a Last Chance Agreement. This agreement stated that if she again did not do an assigned job satisfactorily, the employer would discharge her. The employer then showed the claimant various jobs and

she picked the job she could do. The claimant chose to box tenders. She started doing this job in mid-February. The claimant did not believe she had any problems performing this job.

On March 16, the claimant's supervisor reported the claimant was not keeping up with boxing tenders, and tenders started piling up because she was not getting them boxed fast enough. The claimant does not recall working this job on March 16. Instead, the employer assigned her to another job that required her to do quite a bit of bending. This job caused her back pain. When the claimant told the employer she had problems with the new job, the employer told her to go to the office.

The employer discharged the claimant on March 16 for violating the "Last Chance Agreement. The claimant's supervisor reported she failed to perform her work, boxing tenders, satisfactorily that day.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. If an employee cannot perform satisfactory work, the employer is not required to continue the employee's employment.

The supervisor, who reported the claimant could do the job when she was watched, did not testify at the hearing. It is not known what the claimant did and did not do for the supervisor to reach this conclusion. The claimant's testimony is credible. Therefore, her testimony is given more weight than the employer's reliance on hearsay information from employees who did not testify at the hearing.

The law specifically states that unsatisfactory performance due to inability or incapacity is not misconduct. The facts do not establish why the claimant was unable to perform her assigned work satisfactorily. Based on the evidence presented during the hearing, the employer established the claimant's unsatisfactory work occurred because she was not capable of performing all parts her job even after she received the Last Chance Agreement. As of

March 11, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

DECISION:

The representative's April 30, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons. Unsatisfactory work performance does not constitute work-connected misconduct. As of March 11, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css