

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE L GOMEZ

Claimant

APPEAL NO. 09A-UI-11773-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY

Employer

OC: 11/09/08

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct

Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Swift & Company filed an appeal from a representative's decision dated August 6, 2009, reference 01, which held that no disqualification would be imposed regarding Jose Gomez' separation from employment. After due notice was issued, a hearing was held by telephone on September 1, 2009. Mr. Gomez participated personally. The employer participated by Tony Luse, Employment Manager. Patricia Vargas participated as the interpreter.

ISSUE:

At issue in this matter is whether Mr. Gomez was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gomez was employed by Swift from December 29, 2008 until June 17, 2009 as a full-time production worker. He was discharged for damaging company property. On June 17, he threw the scribe saw used in his work against a guard in the saddle area. The saw became lodged in the guard. His actions resulted in the saw, valued at \$1,200.00, having to be replaced and the guard repaired.

Mr. Gomez had been provided a copy of the employer's work rules in Spanish. An interpreter was available when the employer questioned him regarding the incident. According to the interpreter, he acknowledged throwing the saw. As a result of the incident, he was discharged. The above matter was the sole reason for the separation.

Mr. Gomez filed an additional claim for job insurance benefits effective June 14, 2009. He has received a total of \$3,986.32 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Gomez was discharged for damaging company property. He knew from the work rules that such conduct could result in his discharge. He acknowledged his conduct when questioned by the employer through an interpreter. Destruction of valuable company property is clearly contrary to the type of behavior an employer has the right to expect. For the reasons cited herein, it is concluded that misconduct has been established and benefits are denied.

Mr. Gomez has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated August 6, 2009, reference 01, is hereby reversed. Mr. Gomez was discharged by Swift for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Gomez will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs