

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**STEVEN W MYERS**  
Claimant

**APPEAL NO: 19A-UI-07011-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWAN PACKING INC**  
Employer

**OC: 08/04/19**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 26, 2019, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 26, 2019. The claimant participated in the hearing with Attorney Gregory Taylor. Kathy Bockheim, Accountant; John Veenstra, Supervisor; Angela Smith, Quality Assurance Manager; and Donald Brown, General Manager; participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time maintenance employee for Swan Packing from July 26, 2017 to August 7, 2019. He was discharged for failing to follow his employer's instructions and failure to follow good manufacturing practices as required by the employer.

The claimant worked from 5:00 a.m. to 2:30 or 3:00 p.m. On July 29, 2019, the claimant left for an appointment and did not clock in or out. The employer reminded him he was required to do so when leaving the premises except for lunch.

On the morning of August 6, 2019, the claimant left the building for approximately one hour and again did not clock in or out. Around 8:45 a.m. or 9:00 a.m. Supervisor John Veenstra went to the maintenance shop to ask the claimant to change the blade on the skinner machine. When he arrived at the shop the claimant was talking on his cell phone and eating, both of which are prohibited during work hours under the good manufacturing practices policies except during breaks or lunch. When the claimant ended his phone call Mr. Veenstra directed him to change the blade in the skinner machine. The claimant stated that another manager would run all day with the same blade but Mr. Veenstra was not persuaded and it was a production decision not the claimant's decision. The claimant was expected to go change the blade immediately but instead waited until approximately 11:30 a.m. It took him one and one-half to two hours to

change the blade. A dull blade is a safety issue. He was also observed without his facial hair covered on the plant floor which is another violation of the good manufacturing practices policies.

On October 17, 2018, the claimant received a final written warning and suspension for a safety violation after he failed to disconnect a cord which was sitting in water from the power source before picking it up and was shocked by the cord. The claimant's plan for improvement stated he could have no other safety infractions for one year and the consequences of further infractions is termination, including for any other performance or other violations in the next year.

On March 19, 2019, the claimant received a verbal warning for wearing his frock outside the plant. The employer chose not to terminate him for that violation of the good manufacturing practices policy.

The employer terminated the claimant's employment August 7, 2019, for insubordination and violating the good manufacturing practices policy August 6, 2019.

### **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.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). As a general rule, continued refusal to follow reasonable instructions constitutes misconduct. *Id.*

The claimant's actions August 6, 2019, in leaving without clocking out, and then eating and talking on his cell phone in the shop and failing to have his facial hair covered were violations of the good manufacturing practices policy the employer required employees to follow to insure there is no contamination of the product it produces. The claimant was told one week previously he had to clock in and out when leaving the building but despite that admonition he chose to leave without clocking out again August 6, 2019. The employer also repeatedly told him to cover his facial hair. The claimant's defense that "everyone does it" in reference to eating and using his cell phone in the shop is not persuasive. The claimant knew the rules as he had attended the meetings where those issues were discussed but chose to ignore them and substitute his judgment for that of the employer. Whether he agreed with the rules or not he had an obligation to follow those policies.

The tipping point, however, was the claimant's failure to obey a reasonable instruction by Mr. Veenstra to change the blade in the skinning machine. While the claimant eventually did so, approximately two and one-half hours later, his failure to act immediately was insubordinate. Mr. Veenstra, as a supervisor, directed the claimant to perform a task that involved a safety issue, but instead the claimant chose to drag his feet and not go to that machine for over two hours. Although the claimant denies that testimony, both Mr. Veenstra and Quality Assurance Manager Angela Smith credibly testified that was the case.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The August 26, 2019, reference 02, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs