

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MARTHA Z SLUEUE
Claimant

APPEAL NO. 18A-UI-02101-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 01/14/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Swift Pork Company (employer) appealed a representative's February 6, 2018, decision (reference 01) that concluded Martha Slueue (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 13, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Jacqueline Jones, Hearings Representative, and participated by Chelsea Corelius, Human Resources Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 27, 2017, as a full-time production worker. The employer gave her the corporate handbook at her orientation on March 29, 2017. The handbook states that each local business will create its own rules. At orientation the claimant heard about the local rules and policies. She did not receive a copy of them. On July 14, 2017, the employer issued the claimant a written warning for having food in the locker room. The employer notified the claimant that further infractions could result in termination from employment.

The claimant suffered a work-related injury and was restricted to working as a watch trim, a save eighty-five trim, or a labeler. She carried a red card with those restrictions. The card stated that she could not "be moved to a job not listed on the above section without the approval of the facility ergonomic specialist. Any noncompliance with the items outlined on this card will be subject to disciplinary action".

On December 28, 2017, the claimant's supervisor told the claimant to bag meat. This job was not listed on the claimant's red card and the claimant's fingers were hurting. She risked

disciplinary action by doing a job not on the card. The claimant's supervisor took the claimant to the human resources department. The human resources person somehow thought the claimant was being asked to label empty bags and had refused. The human resources person terminated the claimant for insubordination for failing to label empty bags.

The claimant filed for unemployment insurance benefits with an effective date of January 14, 2018. The employer provided the name and number of Chelsea Cornelius as the person who would participate in the fact-finding interview on February 5, 2018. The fact finder called Ms. Cornelius but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. One of the documents was illegible. The name and number of an employee with firsthand information for rebuttal was not provided to the fact finder.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer's witness at the hearing had no first-hand knowledge of the conversation between the claimant and her supervisor. The claimant did not participate in the hearing but did provide a statement to the fact finder.

Both parties agree that the claimant had a work-related injury and the claimant refused to perform a task. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa App. 1985). It is difficult to evaluate the reasonableness of the request if one does not know for certain what the request was. The claimant was either asked to perform a duty her red card allowed or a duty her red card did not list. Her reason for noncompliance was that her fingers hurt. The employer terminated the claimant for not performing a task when she was experiencing pain from a work-related injury. Not performing work because the employee is experiencing pain is not misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's February 6, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs