

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELENA RODRIGUEZ DE HERNANDEZ
Claimant

APPEAL NO. 11A-UI-04764-DWT
ADMINISTRATIVE LAW JUDGE
DECISION

SWIFT PORK COMPANY
Employer

OC: 10/10/10
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 1, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Aureliano Diaz, the acting human resource manager, appeared on the employer's behalf. Patricia Vargas 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 April 2010. She was hired to work full time in the ham bone department. The employer transferred her to the chitling department in June 2010.

The claimant received written warnings for failing to do her work satisfactorily on August 12, September 2, October 7, and October 8, 2010, and March 1 and 8, 2011. All of the write-ups were because she did not perform her job satisfactorily. On March 1, the claimant was working at a new job and did not understand or know how to operate the metal detector associated with this job.

The claimant had an infection on a finger and/or nail that created problems for when she tried to do her work. The employer gave the claimant a different job in an attempt to help her when her finger/nail was infected. While the claimant tried to do her work satisfactorily, she did not meet the employer's standards.

On March 8, 2011, after she received another written warning for unsatisfactory work performance, the employer discharged her.

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. *Casper 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 acknowledged the claimant did not intentionally fail to do her work satisfactorily. The claimant worked to the best of her ability but was unable to meet the employer's standards. The employer established justifiable business reasons for discharging the claimant. The claimant did not, however, commit work-connected misconduct. Therefore, as of March 6, the claimant is qualified to receive benefits.

DECISION:

The representative's April 1, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but these reasons do not constitute work-connected misconduct. As of March 6, 2011, 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/kjw