

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

NGOR M KUANJ
Claimant

APPEAL NO: 18A-UI-05649-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 04/29/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 14, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 7, 2018. The claimant participated in the hearing with CTS Language Link Interpreter Dina (9710). Vicki Cervantes, Human Resources Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 hired as a full-time general laborer for Swift Pork Company from July 31, 2017 to April 26, 2018. He was discharged for insubordination.

On July 31, 2017, the claimant had an altercation with his supervisor and raised his voice and came toward him in an aggressive manner and was placed on a final written warning. On February 26, 2018, the claimant received a verbal warning after his manager spoke to him about his behavior and failure to meet expectations in the rendering department. The claimant stated he "didn't care" when his supervisor attempted to give him direction. The claimant was taken to human resources and told if his behavior continued he would face a written warning, suspension and termination. On March 8, 2018, the claimant was placed on suspension for screaming at management again. The claimant returned to work March 14, 2018, and the employer issued him a final written warning. On April 26, 2018, the claimant was suspended for violating a previous final written warning for repeatedly being late to the line and calling his supervisor "stupid." On April 27, 2018, the employer contacted the claimant and terminated his employment for violating the final written warning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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). 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 substantial and 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).

The claimant was repeatedly disrespectful, inappropriate and unprofessional toward management and his behavior was insubordinate. While the claimant stated he has anger issues and a temper that does not relieve him of his responsibility to behave in an acceptable and professional manner. Under these circumstances, the administrative law judge must

conclude the employer has met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be denied.

DECISION:

The May 14, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for disqualifying job misconduct. Benefits are denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn