

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NAYELI SANCHEZ BALLESTEROS**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 17A-UI-08035-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/16/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 1, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was no longer authorized to work in the United States. The parties were properly notified of the hearing. A telephone hearing was held on August 25, 2017. The claimant, Nayeli Sanchez Ballesteros, participated. The employer, Swift Pork Company, registered a participant but was not available when called at the hearing time and did not participate in the hearing.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as an indexer, from December 9, 2016, until April 22, 2017, when she was discharged for having an expired work permit. Claimant was aware that her work permit had expired. She had applied for a new work permit, but she had not yet received it. The employer held open claimant's job for sixty days, to give her an opportunity to produce a valid work permit. Claimant did not receive her new work permit until sometime in July 2017. Claimant was aware that she needed a valid work permit to work for the employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying misconduct. Benefits are withheld.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In *Altimaux v. Plumrose USA, Inc.*, Hearing Number 12B-UI-13394 (2013), the Employment Appeal Board considered the question of whether the claimant's failure to take timely steps to renew work authorization constituted misconduct in connection with the employment. The Board reasoned as follows:

Given the claimant's status as a non-U.S. citizen, it was incumbent upon him to maintain a current and valid work authorization card. Having gone through the process of obtaining an updated one for, at least, the past several years renders him culpable for having 'dropped the ball' in this instance. While, at first blush, it may seem like an isolated instance of poor judgment, we find his behavior blatantly negligent and

disregarding of the employer's interests. The claimant's loss of employment was directly attributable to his failure to take care of an important personal and legal responsibility to himself and to the employer. This case can be likened to the claimant in *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980) wherein the claimant in *Cook* lost his insurability because of traffic tickets he accumulated. The court held that said loss was self-inflicted and disqualifying misconduct. So, too, does the Board hold that Mr. Altimaux's loss of work status in the United States, and subsequent employment, was self-inflicted due to his failure to timely update his work authorization card.

The employer is entitled to establish reasonable work rules and expect employees to follow them. Claimant failed to maintain valid work authorization to ensure that she could keep her job. The employer has a compelling interest in ensuring all employees are legally authorized to work in the United States, as employing individuals without valid work authorization is a federal crime. Claimant's failure to maintain authorization to legally work in the United States was in willful disregard of the employer's interests and constitutes disqualifying misconduct in connection with the employment. Benefits are withheld.

**DECISION:**

The August 1, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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