

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR PAZ

Claimant

APPEAL NO. 13A-UI-08331-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 06/09/13

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Victor Paz (claimant) appealed an unemployment insurance decision dated July 16, 2013, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Swift Pork Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 20, 2013. The claimant participated in the hearing with Spanish interpreter Gifella Young. The employer participated through Luis Meza, Human Resources Supervisor.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 employed as a full-time production worker from June 15, 2009 through April 4, 2013 when he was discharged due to the expiration of his work permit. In order to legally work in the United States, an employee has to show proof of US citizenship or a valid work permit. Work permits are valid for a period of one year. If the employee does not have a valid work permit, the employer has to terminate his or her employment. If the employee obtains a valid work permit and provides that to the employer within 30 days of the termination date, he or she can be reinstated to their former position.

The claimant's most recent work permit went from April 5, 2012 through April 4, 2013. The employer gave him formal written notice that his work permit was going to expire and that he would not be able to work beyond that date unless it was renewed. The claimant signed these warning notices on October 5, 2012; December 1, 2012; February 1, 2013; and March 8, 2013. Since his date of hire, he has been terminated each year due to not having his work permit updated before it expired but he had always been reinstated within the 30 days. The claimant

did not provide the employer with a valid work permit within 30 days of April 4, 2013. He has subsequently obtained a valid work permit effective June 5, 2013 but his employment had been terminated by that date. The claimant contends it took four months to renew his work permit and that he had no control over it.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 4, 2013 because he failed to provide an updated work permit prior to its expiration. While the claimant contends it took four months to renew his work permit, he failed to introduce evidence confirming that claim. Additionally, he has demonstrated a consistent pattern of failing to renew his work permits in a timely manner. Where an individual's own conduct renders him unemployable by his employer, he is guilty of misconduct within the meaning of the law. See *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980). Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 16, 2013, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs