

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JONATHAN WORKMAN
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 19A-UI-07220-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/04/19
Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Swift Pork Company (employer) appealed a representative's September 3, 2019 decision (reference 05) that concluded Jonathan Workman (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 3, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Vicky Cervantes, Human Resources Manager. The administrative law judge took official notice of the administrative file.

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 February 25, 2019, as a full-time maintenance mechanic and placed on six-months' probation. All maintenance mechanics are hired with at least a minimum of six-months' probation. He signed for receipt of the employer's handbook on February 25, 2019. The employer did not issue the claimant any warnings during his employment. Profanity was used in the work place.

On June 27, 2019, the claimant was putting plastic above conveyor lines. The supervisor thought the claimant was treating the materials roughly and commented that the cable could cut through the lock-out handles. The supervisor thought the claimant had "an attitude". The claimant walked away at some point.

On June 28, 2019, the claimant approached the supervisor with a complaint about two co-workers. After the supervisor responded, the claimant said the supervisor was always "making some bullshit excuse" to blame him. The supervisor told the claimant he did not know what he could do to make him happy. The two went to human resources. The claimant was transferred

away from the supervisor and his probation was extended by ninety-days. No reason was given for the extension.

On July 31, 2019, a supervisor asked the claimant why he did not have a radio and smiled in such a way that made the claimant think he was making fun of him. The claimant became upset said, "Go fuck yourself". He raised his middle finger to the supervisor.

The supervisor took the claimant to the human resources department. The employer placed the claimant on suspension pending investigation. On August 7, 2019, the employer terminated the claimant for violation of the best work environment policy when he used profanity and a hand gesture.

The claimant filed for unemployment insurance benefits with an effective date of August 4, 2019. The employer provided the name and number of Niko Aguirre and Vicky Cervantes as the people who would participate in the fact-finding interview on August 29, 2019. The fact finder called one of the numbers and 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 other number was disconnected. The employer did not provide any documentation identifying the dates of a final incident or submit the specific rule or policy that the claimant violated which caused the separation.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer allows profanity on site and had not previously warned claimant about using profanity, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise qualified.

DECISION:

The representative's September 3, 2019, decision (reference 05) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided the claimant is otherwise qualified.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs