

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EDGAR E MENDEZ
Claimant

SMITHFIELD FRESH MEATS CORP
Employer

APPEAL 19A-UI-10150-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/17/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On December 23, 2019, Edgar E. Mendez (claimant) filed an appeal from the December 12, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination Smithfield Fresh Meats Corp. (employer) discharged him for sleeping on the job. The parties were properly notified about the hearing. A telephone hearing was held on January 17, 2020 and consolidated with the hearing for appeal 19A-UI-10151. The claimant participated personally. The employer participated through Roberto Mejia, Production Supervisor; William Knudsen, Production Supervisor; and Rebecca Jackson, Human Resources Manager. Spanish interpretation was provided by Melania (employee number 12249) from CTS Language Link. The Employer's Exhibits 1 through 6 were admitted into the record.

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: The claimant was employed full-time as a Hog Roller beginning on October 25, 2016, and was separated from employment on November 14, 2019, when he was terminated. The employer has a policy that prohibits sleeping on the job and states violation of the policy may result in discharge. However, the employer's practice is if the employee is found nesting or creating a sleeping area, they are automatically discharged. The claimant was aware of the policy.

The claimant's job required him to roll hogs in twenty-minute shifts. In between his hog rolling shifts, he was responsible for picking up hogs off the floor. On November 8, 2019, Roberto Mejia, Production Supervisor, followed the claimant to the floor. He saw the claimant look at the hogs on the floor and then walk upstairs. Mejia assumed it was the claimant's turn to roll the hogs. After ten minutes, Mejia noticed the claimant's co-worker rolling hogs and the claimant was not on the floor picking up hogs, so he searched for the claimant. Mejia found the claimant asleep next to a hot water tank where a ladder had been laid on the floor and covered in cardboard with a pail at one end and a cardboard pillow at the other end. Mejia found the

claimant laid out on the ladder and cardboard, with his head resting on the pillow, his feet propped up on the pail, his helmet off, and his eyes closed.

Mejia left the claimant asleep and contacted William Knudsen, Production Supervisor. Knudsen arrived a few minutes later and advised Mejia to get his cell phone which was located in Mejia's locker. Mejia went to get his cell phone and the two approached the claimant. Mejia took photos of the claimant asleep on the makeshift bed and video of Knudsen waking the claimant. The claimant returned to the kill floor and Knudsen reported the incident to Nick Desy, Superintendent.

The issue was escalated to Rebecca Jackson, Human Resources Manager, who met with Knudsen and the claimant. The claimant denied sleeping but said he was resting due to pain in his shoulder. He also argued that he should not be picking up hogs as that was something the red hat employees should do. Jackson reminded him that picking up hogs was part of his job duties and he was suspended pending investigation for the sleeping on the job. On November 14, the claimant was discharged for violation of the employer's policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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 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).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has an interest in having employees performing work while they are being paid as failing to work while being paid is a form of theft. The claimant deliberately went to a makeshift bed to sleep while he was being paid instead of performing work as directed. The claimant's conduct was a deliberate disregard of the employer's interests and a deliberate disregard of the reasonable conduct an employer can expect of an employee. It is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The December 12, 2019, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Stephanie R. Callahan
Administrative Law Judge

January 21, 2020
Decision Dated and Mailed

src/scn