

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC T JOHN
Claimant

APPEAL NO. 09A-UI-16038-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPAN7
Employer

**Original Claim: 01/18/09
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's October 20, 2009 decision (reference 03) that held he was disqualified from receiving benefits, and the employer's account was not subject to charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on December 1, 2009. The claimant participated in the hearing. Tony Luse, the employment manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 27, 2009. The claimant worked as a full-time second-shift production employee. At the time of hire, the claimant received a copy of the employer's handbook. The claimant knew the employer's policy required employees to punch out if they left the employer's property.

Before September 26, 2009, the claimant's job was not in jeopardy. On September 26, the claimant took a scheduled 15-minute break around 6:00 p.m. The claimant did not take his prescription medication during this break. At 7:15 p.m., the claimant asked a line supervisor if he could leave the line to take his medication. The claimant received permission to take the medication. The medication was in the claimant's car. The claimant was supposed to take the medication with food. The claimant did not have any food in his car so he walked across the street to a taco stand to get a taco. When the claimant returned to the employer's plant, about ten minutes later, the line supervisor and a human resource employee, Aaron Vawter, were waiting for him outside.

When the employer talked to the claimant, the supervisor denied giving the claimant permission to leave the line to take a break. Since the claimant left the employer's property without authorization and he had not clocked out, the employer considered him to have walked off the

job without authorization. In accordance with the employer's policy, this constituted a major violation and subjected the claimant to immediate termination. The employer concluded the claimant violated this policy and discharged him on September 26, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The evidence establishes the claimant had no intention of quitting his employment. The employer initiated the employment separation by discharging the claimant on September 26, 2009.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew when he took his 6:00 p.m. break he needed food to take with his medication. Since the employer had vending machines, the claimant could have and should have purchased food from a vending machine to take with his medication later on. Even if the claimant only had a \$20.00 dollar bill, he could have taken steps to get change and use the vending machine during his scheduled 6:00 p.m. break. The claimant did not do this.

Instead, after he received permission to take his medication at 7:15 p.m., he walked across the street to buy a taco so he had food to take with his medicine. The claimant knew other employees took unauthorized breaks. The claimant, however, did not realize other employees who took unauthorized breaks and caught taking unauthorized breaks were discharged.

A preponderance of the evidence establishes the claimant made a decision to take an unauthorized break by leaving the employer's property to get a taco. The claimant could have purchased food from a vending machine at his 6:00 p.m. break (the employer's cafeteria was not open on September 26). He intentionally violated the employer's policy when he made the decision to get a taco at 7:15 p.m. to take with his medication instead of purchasing some vending machine food. The facts indicate the claimant thought he could take an unauthorized break because he knew other employees who had done so. The claimant knew or should have known he violated the employer's policy by taking an unauthorized break when he went across the street to get a taco. The claimant's excuse that he needed food to take with his medication does not excuse his intentional violation of the employer's policy, since he could have purchased food during his 6:00 p.m. scheduled break and did not. The claimant's actions on

September 26 amount to an intentional and substantial violation of the employer's policy. The claimant committed work-connected misconduct. Therefore, as of September 27, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's October 20, 2009 decision (reference 03) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 27, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw