

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA VALDEZ
Claimant

APPEAL NO. 11A-UI-15452-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 11/06/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 29, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on December 22, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Steven Rhodes. Aureliano Diaz participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a laborer from April 11, 2011, to November 11, 2011. She was informed and understood that under the employer's work rules, employees were prohibited from fighting on company property.

In the locker room before work on November 11, 2011, the claimant was violently attacked by a coworker who falsely accused the claimant of going out with the coworker's boyfriend. The claimant attempted to retreat until she was backed into a locker door. The coworker continued to strike the claimant with her fists. The claimant struck back once in self-defense and then grabbed the coworker's hair to prevent the coworker's from continuing to hit her. She called out for a supervisor. Another employee told a coworker to quit hitting the claimant. The coworker stopped and the claimant let go of the coworker's hair. Around that time, a supervisor appeared.

The employer discharged the claimant on November 11, 2011, for fighting on company property.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

No willful and substantial misconduct has been proven in this case. The claimant was not the instigator of the altercation. The coworker struck the claimant first. The claimant attempted to retreat and then only acted in self-defense. Based on the precedent of Savage v. EAB, 529 N.W.2d 640 (Iowa App. 1995), the claimant is not disqualified.

DECISION:

The unemployment insurance decision dated November 29, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw