

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROLAND L DE VILDER**  
Claimant

**APPEAL NO. 12A-UI-14061-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 10/28/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated November 21, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 3, 2013. Claimant participated. The employer participated by Mr. Aureilano Diaz, Human Resource Manager.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Roland De Vilder was employed by Swift Pork Company from August 22, 2005 until October 16, 2012 when he was discharged from employment. Mr. De Vilder was employed as a third shift hog barn driver and was paid by the hour.

Mr. De Vilder was discharged based upon the employer's belief that he had violated the company's humane handling of livestock policy on or about October 16, 2012. On that date, the claimant was observed moving a hog by using a skid loader to do so. The management individual who observed Mr. De Vilder believed that the claimant was pushing and harming the hog in violation of the company's humane treatment policy.

During the incident in question Mr. De Vilder was able to situate the rear portion of the hog into the bucket portion of the skid loader and slowly was moving the hog forward approximately two feet to clear the alleyway so that the hog would not be injured or impede other traffic in the alleyway. No other help was available to assist Mr. De Vilder in completely loading the hog into the bucket, the claimant therefore slowly moved the hog allowing the animal's front feet to slowly proceed the skid loader's movement.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter a decision was made to terminate the claimant based upon the employer's belief that Mr. De Vilder had violated the company's humane handling of livestock policy. In support of its position the employer relies upon hearsay evidence that Mr. De Vilder acted

inappropriately in moving the hog in question. In contrast, the claimant appeared personally and provided first-hand sworn testimony denying any violation of the company's humane handling policy and explaining the methods that Mr. De Vilder used in slowly moving the animal approximately two feet to clear an alleyway.

Although the administrative law judge does not condone nor sanction any form of animal mistreatment, the evidence in the record is not sufficient to establish intentional disqualifying misconduct on the part of the claimant sufficient to deny unemployment insurance benefits. The claimant explained that he was merely moving the animal approximately two feet in a very slow manner to clear an alleyway and that no additional help was available to him to load the animal completely into the skid loader bucket. The claimant in his testimony denies hurting the animal or acting in any inhumane manner.

While the decision to terminate Mr. De Vilder may have been a sound decision from a management viewpoint, the evidence in the record for the above-stated reasons does not establish intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated November 21, 2012, reference 01, is reversed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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