

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CATHERINE L SHILLING**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 16A-UI-07115-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/05/16  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 24, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on July 15, 2016. The claimant, Catherine L. Shilling, participated, and was represented by Brian Ulin, non-attorney representative. The employer, Swift Pork Company, participated through Alejandra Rojas, employment manager.

**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: Claimant was employed full time as a cut department employee from August 26, 2013, until this employment ended on June 7, 2016, when she was discharged.

The employer requires any employee who is leaving the production line to use the restroom to sign out when leaving, noting the time she departs, and to sign in when returning, noting the time she returns. Claimant was discharged for falsifying the times she reported on this document. Rojas testified that claimant's supervisor saw her leave two minutes earlier than the time she reported, and he saw her return ten minutes after the time she reported. Claimant had no prior warnings for reporting incorrect times on this document.

Claimant testified she looked at the digital clock and wrote down the times when she was leaving and returning. Claimant was not wearing her glasses, and she had some difficulty seeing the numbers on the clock. All parties agreed that the breaks reported on this document do not affect an employee's compensation. Rather, the employer uses this to document time employees spend away from the line, which in turn may lead to production downtime. However, when an employee leaves the line, she has a coworker take her place so the line does not have to shut down.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

The conduct for which claimant was discharged was merely, at most, an isolated incident of poor judgment. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Here, claimant had never been warned for any similar issue in the past. Even if she intentionally misrepresented the amount of time she was away on break, this did not affect her compensation

and does not amount to time theft from the employer. As the employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

**DECISION:**

The June 24, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/pjs