

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANK J HEFFRON
Claimant

APPEAL NO: 13A-UI-14144-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 12/08/13
Claimant: Appellant (2)

Iowa Code § 96.5(2) - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 26, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing with his attorney, Michelle Jungers, and his witness, Joe Ross. Aureliana Diaz, the interim human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in December 2006. He worked full time on second shift as a laborer in the hog barn.

On May 7, 2013, the employer suspended the claimant for three days for failing to follow a supervisor's instructions. The warning the claimant received for this infraction indicated that this was his final written warning. A final written warning is effective for one year. If an employee has a similar warning within a year, the employee will be discharged.

On December 9, 2013, a supervisor, C.J. concluded the claimant took too much time getting hogs to the Butina and was not performing his job satisfactorily. C.J. did not notice any problems with running hogs on the claimant's side, but noticed a gap. When C.J. asked the claimant what was going on, the claimant acted like he did not care. Other employees who worked that day concluded the claimant was performing his job satisfactorily. They remembered there were problems with the Butina on the other side, which caused the gap. The claimant acknowledged he had problems getting hogs into the Butina that day because they were slow, but he could not make them move any faster. On December 9, the claimant worked to the best of his ability.

On December 9, the employer discharged the claimant for unsatisfactory job performance when he was already on a final written warning.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer discharged the claimant for unsatisfactory job performance. While the employer established business reasons for discharging the claimant, the evidence does not establish that he committed a current act of work-connected misconduct. Therefore, as of December 8, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's December 26, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of December 8, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css