

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORRIE A BARTLETT
Claimant

APPEAL NO. 08A-UI-01942-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 01/20/08 R: 02
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Lorrie Bartlett, filed an appeal from a decision dated February 13, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 12, 2008. The claimant participated on her own behalf. The employer, Swift, participated by Employment Manager Tony Luse.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Lorrie Bartlett was employed by Swift from September 26, 2005 until January 23, 2008, as a full-time production worker. She received orientation at the time of hire and attended yearly safety training. Violation of major safety rules is considered grounds for immediate discharge.

On January 21, 2008, the claimant was seen by a supervisor and other employees removing a guard from a saw on the production line in order to remove a piece of meat which had become lodged in the blade. Safety regulations require the equipment to be “locked out/tagged out” by a maintenance person before the guard is removed. Even if the equipment is switched off it is still considered unsafe until maintenance cuts off the power supply.

Ms. Bartlett was taken to the human resources department by general foreman Ben Husinga and Human Resources Representative Aaron Vawter suspended her pending investigation. Other employees and the supervisor were interviewed, and the claimant also acknowledged she had removed the guard before the saw was locked out/tagged out. She was then notified by Mr. Vawter on January 23, 2008, she was discharged.

REASONING AND CONCLUSIONS OF LAW:

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 claimant violated a serious safety regulation by removing the guard from a saw and removing product from the blade when it had not been logged out/tagged out. Even though the saw was shut off, it was not considered safe until the power supply had been locked out as it could still result in serious injury to the claimant or others. This is considered a major safety violation and is conduct not in the best interests of the employer. The claimant was fired for violation of a known company rule and is disqualified.

DECISION:

The representative's decision of February 13, 2008, reference 01, is affirmed. Lorrie Bartlett is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs