

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHANIEL B MCMANUS
Claimant

APPEAL NO. 09A-UI-01039-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 12/28/08 R: 01
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Nathaniel B. McManus (claimant) appealed a representative's January 20, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Swift & Company. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 10, 2009. The claimant participated in the hearing. The employer's representative received the hearing notice and responded by contacting the Appeals Section and reporting that Tony Luse would participate on behalf of the employer. However, when the administrative law judge called Mr. Luse at the scheduled time for the hearing, he indicated that the employer was opting not to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on December 28, 2006. He worked full time as a load dock picker and loader on the third shift in the employer's Marshalltown, Iowa pork processing facility. His last day of work was the shift that began at 11:00 p.m. on December 23 and ended at 7:00 a.m. on December 24, 2008. The employer suspended him that day and discharged him on December 30, 2008. The reason asserted for the discharge was a belief the claimant had slashed the tire on the night supervisor's car.

On the claimant's last night he had questioned the supervisor about what should be done about some boxes of old product that were in the dock area. The supervisor did not respond to the substance of the claimant's question, but told him to go do his "f - - ing job." The claimant became upset and some further words were exchanged before the claimant went about his duties. At the end of the shift the claimant was called into the office by the plant manager and a superintendent. They questioned him about the fact that the tire on the supervisor's car had

been found slashed. The claimant denied having anything to do with the incident, but the managers continued to badger him and told him they had statements from two other employees claiming they had witnesses the claimant slash the tire. After the managers kept after him, the claimant said, "Fine, I did it," figuring that it did not matter what he said. As a result, the employer suspended him and subsequently discharged him. The claimant testified at the hearing under oath and under penalty of perjury that he did not have anything to do with the slashing of the tire.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the belief he had slashed the tire of the supervisor with whom he had had a dispute. The claimant's uncontroverted sworn testimony is that he was not responsible for the tire being slashed. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 20, 2009 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css