

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GODFRID Y BANIBA

Claimant

APPEAL NO. 14A-UI-03802-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 03/09/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Swift Pork Company (employer) appealed a representative's April 1, 2014, decision (reference 01) that concluded Godfrid Baniba (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 29, 2014. The claimant participated personally. The employer was represented by Christine Page, Hearings Representative, and participated by Aureliano Diaz, Human Resources Interim Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 21, 2011, as a full-time third shift knife room mechanic. The claimant signed for receipt of the employer's handbook on November 21, 2011. The handbook prohibits sleeping at any time on company property. The employer did not issue the claimant any warnings during his employment.

On March 13, 2014, a supervisor walked by a room where the claimant and two other employees were sitting waiting for set up. Sitting was allowed while waiting. The supervisor saw one person who appeared to be sleeping and took his picture. The supervisor assumed all three people were sleeping because they were seated. The supervisor thought the claimant was sleeping because his head and back were against the side of the sink and his eyes were closed. The claimant's eyes were not closed and he spoke to the supervisor when the supervisor entered the room. The employer suspended the claimant on March 13, 2014, and terminated him on March 14, 2014, for sleeping.

The claimant filed for unemployment insurance benefits with an effective date of March 9, 2014. The employer participated personally at the fact-finding interview on March 31, 2014, by Aureliano Diaz.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Sleeping on the job on two occasions, one year apart, can constitute job misconduct. The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986). The employer did not provide sufficient evidence that the claimant was sleeping on the job. In addition, if the claimant was sleeping on the job, this would have been a single instance of sleeping on the job and would not have risen to the level of misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 1, 2014, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs