

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW J ZIEMKE

Claimant

APPEAL NO: 13A-UI-08705-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 03/10/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 24, 2013, reference 02, that held he was discharged for misconduct on June 28, 2013, and benefits are denied. A telephone hearing was held on September 3, 2013. The claimant did not participate. Louis Meza, HR Supervisor, participated for the employer.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on May 11, 2009, and last worked for the employer as a full-time production employee on June 28, 2013. The employer suspended claimant on June 28 and discharged him on July 5 for violation of the work environment policy.

The employer issued claimant a final written warning on March 12, 2013 for violation of the work environment policy that involved in appropriate behavior with co-workers. He was put on notice a further incident could lead to termination.

On June 28 claimant became loud and made discriminatory remarks to co-workers on the production line. He continued with profanity and inappropriate gestures to co-workers in the cafeteria. The employer suspended claimant pending investigation.

After interviewing claimant and co-workers the employer concluded claimant had violated the work environment policy with inappropriate behavior on June 28, and in light of the final warning, he was discharged.

Claimant failed to respond to the hearing notice.

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 administrative law judge concludes employer established claimant was suspended on June 28 and discharged for misconduct on July 5, 2013 for repeated violation of the employer work environment policy.

The employer had issued claimant a final warning for his inappropriate behavior with co-workers, and his repeated policy violation on June 28 constitutes job disqualifying misconduct.

DECISION:

The department decision dated July 24, 2013, reference 02, is affirmed. The claimant was discharged for misconduct on June 28, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css