

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON D GOODES

Claimant

APPEAL NO. 11A-UI-06455-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 04/03/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Burden of Proof

STATEMENT OF THE CASE:

Swift Pork Company filed a timely appeal from an unemployment insurance decision dated May 2, 2011, reference 01, that allowed benefits to Jason D. Goodes. Due notice was issued for a telephone hearing to held June 14, 2011. Neither the appellant nor the claimant responded to the notice. This decision is based on documents from the fact-finding interview.

ISSUE:

Has the employer met its burden of proof that the claimant was discharged for misconduct?

FINDINGS OF FACT:

Jason D. Goodes was employed by Swift Pork Company from October 18, 2010 until he was discharged March 1, 2011. The claimant was discharged for “unsatisfactory performance and excessive disciplines.” Mr. Goodes had received several warnings during his employment for poor workmanship, attendance and arguing with coworkers.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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. See Iowa Code section 96.6-2. As noted above, the employer did not provide the name and telephone number of a witness for the contested case hearing. Agency records indicate that the stated reason for discharge at the fact-finding interview was poor performance and lack of initiative. This language states the employer's conclusions about the claimant's work. It does not inform the administrative law judge of the particulars, most notably the final incident leading to discharge. Absent testimony establishing that the final incident leading to discharge was a current act of misconduct, no disqualification may be imposed. See 871 IAC 24.32(8).

DECISION:

The unemployment insurance decision dated May 2, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

css/css