

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

AUDEL RUIZ
307 N 4TH AVE
MARSHALLTOWN IA 50158

SWIFT & COMPANY
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 05A-UI-05607-JTT
OC: 04/24/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Audel Ruiz filed a timely appeal from the May 18, 2005, reference 01, decision that denied benefits. After due notice was issued, an interpreted hearing was held on June 14, 2005. Mr. Ruiz participated and provided additional testimony through Roberto Ibarra. Human Resources Manager Cheryl Hughlette represented Swift and presented additional testimony through Livestock Analyst Leah Johnson.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Audel Ruiz was employed by Swift as a full-time production worker from January 14, 1999 until April 20, 2005, when Human Resources Manager Cheryl Hughlette discharged him for violating

U.S.D.A. regulations regarding the humane treatment of livestock. Mr. Ruiz worked in the barn area and herded hogs from pen to pen as they made their way into the production plant.

The final incident that prompted the discharge occurred on April 20, 2005, when Livestock Analyst Leah Johnson and a U.S.D.A. inspector witnessed Mr. Ruiz prodding a hog in the eye and in the ear canal with an electric prod. The U.S.D.A. regulations regarding humane treatment of livestock prohibit prodding the animal in the eye, ear canal, and other sensitive areas. Mr. Ruiz had received appropriate training in the humane herding and/or prodding the hogs and knew how to comply with the U.S.D.A. regulations. When the U.S.D.A. inspector witnessed Mr. Ruiz's inhumane treatment of the hog, he threatened to shut down production at the Swift plant. Mr. Ruiz had been reprimanded on February 22, 2005, for jabbing a hog in an excessive manner. This was another violation of the U.S.D.A. regulations regarding humane treatment of livestock. Mr. Ruiz was advised at the time of the February reprimand that if the behavior recurred he would be discharged. Despite this warning, Mr. Ruiz decided that the only way he could keep the hogs moving at the pace required by his supervisors was to violate the U.S.D.A. regulations and intentionally violated those regulations on April 20.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Ruiz was discharged for misconduct in connection with his employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence establishes that Mr. Ruiz deliberately violated the U.S.D.A. regulations regarding humane handling of livestock despite having received appropriate training and despite having been previously warned that he would be discharged for such behavior. In violating the U.S.D.A. regulations, Mr. Ruiz acted with willful and wanton disregard of the interest of his employer. Mr. Ruiz was discharged for misconduct and is, therefore, disqualified for benefits.

DECISION:

The Agency representative's decision dated May 18, 2005, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements.

jt/sc