

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ISAK H BAIRE
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 17A-UI-03991-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/19/17
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 5, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 4, 2017. Claimant participated personally and through interpreter 6351 with CTS Language Link. Claimant was represented by attorney David Loetz. Lynette McDonough observed. Employer participated through human resources coordinator Kristy Knapp and supervisor Alex Hernandez.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 18, 2015. Claimant last worked as a full-time production/cut/lift/neck bones. Claimant was separated from employment on March 2, 2017, when he was suspended without pay and was later terminated.

Employer has a policy stating that no employee shall threaten, intimidate, or physically assault another team member, member of management, supervisory, or any other employee. Claimant was aware it is inappropriate to assault a co-worker in the workplace.

On March 2, 2017, claimant was working on the production line with a co-worker named Armondo. Another co-worker was using the restroom and claimant and Armondo began falling behind in their work. Claimant and Armondo began arguing. Claimant and Armondo were both working with very sharp knives in their hands. Armondo approached claimant and pointed his knife inches away from claimant's stomach. Claimant was in a small space and could not escape. Claimant set his own knife down and grabbed the knife from Armondo's hand. Claimant then pushed Armondo in the neck. Armondo fell and his hard hat came off.

Armondo reported the incident to employer's human resource department the same day. Employer suspended claimant without pay. Employer conducted an investigation and concluded claimant assaulted Armondo without being provoked.

On March 9, 2017, claimant was terminated.

Claimant had never been previously disciplined for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp’t Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995).

In this case, claimant pushed a co-worker, Armondo, after Armondo pointed a sharp knife inches away from claimant’s stomach. There was no means of escape, so claimant defended himself by grabbing the knife from Armondo’s hand and pushing him away. Although supervisor Alex Hernandez testified that he saw claimant pushing or punching Armondo in the head, he acknowledged that he did not see what happened before this occurred. Thus, claimant was the only first-hand witness who presented testimony about what occurred and I find his testimony credible.

Claimant acted in self-defense and therefore employer failed to establish claimant was terminated for job-related misconduct.

DECISION:

The April 5, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/rvs