

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDY D LILES

Claimant

APPEAL 17A-UI-13077-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 01/29/17

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Randy D. Liles (claimant) filed an appeal from the December 15, 2017, reference 07, unemployment insurance decision that denied benefits based upon the determination Swift Pork Company (employer) discharged him for wonton carelessness in the performance of his job duties. The parties were properly notified about the hearing. A telephone hearing was held on January 11, 2018. The claimant participated. Union Representative Brian Ulin participated on the claimant's behalf. The employer did not respond to the hearing notice and did not participate. The Claimant's Exhibit A was admitted into the record.

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: The claimant was employed full-time as a Deli Feeder with Cargill beginning on October 31, 1989, and the employer took over Cargill on October 30, 2015. The claimant was separated from employment on November 15, 2017, when he was discharged.

On that day, Alan Garcia, a safety person, asked the claimant to wear his knife using a plastic chain. The claimant wore it as requested but objected due to safety concerns specific to his machine. When the knife caught on the machine and fell on the floor, the claimant called Garcia over to see the potential safety hazard. Garcia accused the claimant of intentionally putting the knife on the floor. The claimant denied the accusation. Garcia then reported to management that the claimant was being belligerent and hostile. The claimant denied being hostile or belligerent toward Garcia. The employer did not speak to all of the employees who were present during its investigation and it discharged the claimant the same day the incident occurred.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer has not established that the claimant engaged in hostile conduct toward another employee. The claimant's unrefuted testimony is that he answered Garcia's questions and was not hostile toward him when they were discussing the knife issue. The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The December 15, 2017, reference 07, unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn