

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN B PANTHER
Claimant

APPEAL NO. 12A-UI-05195-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 04/15/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 2, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. Aureliano Diaz, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant of reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 1989. The claimant worked full time as a livestock handler on second shift. The claimant has received information about the employer's drug and alcohol policy. The policy informs employees the employer has zero tolerance for drinking alcohol at work.

On March 3, 2012, the claimant and other employees attended an annual training at a local hotel. An employee at the training saw the claimant drink some beer he had retrieved from his jacket pocket. Management talked to the claimant in a hallway about this report. The claimant admitted he had taken some drinks during the meeting. The employer noticed the beer bottle was open and was not full. The employer drove the claimant back to the work place where the employer did a preliminary drug and alcohol screening. The BAC reading the employer did was 0.00 both times. The employer's preliminary test showed evidence of a controlled substance so the claimant's sample was sent to a certified laboratory for further testing. The employer suspended the claimant without pay on March 3.

On March 16, the employer discharged the claimant for violating the employer's alcohol policy by drinking beer while on company time at the training session.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's assertion that he bought a bottle of beer to drink after the training session was over is not credible. It is not logical to drink warm beer when he could have bought a cold beer after the training was over and he was off duty. There is no logical reason for the claimant to buy a bottle of beer and keep it in a jacket pocket unless he was drinking the beer during the training session. Even though the employer's first hand witnesses did not testify, the claimant's testimony is not credible. Under these circumstances, the employer's hearsay information from witnesses who did not testify at the hearing must be given more weight than the claimant's testimony.

The claimant understood the employer did not allow employees to possess and drink alcohol while at work or at a work-related training session. The claimant attempted to hide the beer so other employees did not know he had it. The claimant's conduct on March 3 amounts to work-connected misconduct. The claimant is not qualified to receive benefits.

DECISION:

The representative's May 2, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 15, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs