

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**YOMAR H ACOSTA**  
Claimant

**APPEAL NO. 12A-UI-09291-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 06/24/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated July 26, 2012, reference 01, which held claimant ineligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 27, 2012. Claimant participated personally. Participating on behalf of the claimant was his attorney, Mr. Matt Milligan. The employer participated by Mr. Javier Sanchez, Human Resource Assistant Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Yomar Acosta was employed by Swift Pork Company from October 4, 2010 until June 19, 2012 when he was discharged from employment. Mr. Acosta worked as a full-time production worker and was paid by the hour.

Mr. Acosta was discharged after he self-reported to his supervisor that he had damaged a company knife while attempting to get another worker's attention for work-related reasons. The claimant struck the knife on a metal portion of a work area because he could not gain the attention of the other employee due to the loud work environment and because workers were wearing ear plugs.

It was the employer's belief that Mr. Acosta had damaged the knife while engaged in non-work activity and, therefore, discharged the claimant for intentional destruction of company property.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is 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 in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the claimant participated personally and testified under oath that he did not intentionally damage the company work knife but that it was inadvertently broken while he was attempting to gain the attention of another employee for a work-related reason. In contrast, the evidence in support of the employer is hearsay in nature. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony.

The administrative law judge finds the claimant's testimony to be credible and not inherently improbable. While the decision to terminate Mr. Acosta may have been a sound decision from a

management viewpoint, for the above-stated reasons the administrative law judge concludes that the evidence in the record is not sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated July 26, 2012, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

pjs/pjs