

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MR LAVERN JACKSON**  
Claimant

**APPEAL NO: 12A-UI-07570-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 05/13/12**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Swift Pork Company (claimant) appealed an unemployment insurance decision dated June 14, 2012, reference 01, which held that Lavern Jackson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 18, 2012. The claimant participated in the hearing. The employer participated through Aurelliano Diaz, Human Resources Manager and Javier Sanchez, Human Resources Assistant Manager. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time production worker assigned to the kill floor on August 3, 1970 and became a supervisor in February 1988. He was discharged on May 9, 2012 for falsification of company records. The claimant managed the area where the hogs are kept in pens before being slaughtered. All hogs must be inspected by an employee from the USDA before they can be slaughtered or processed. An employee from the USDA must preapprove all hogs that are slaughtered or processed.

The hogs are placed in pens prior to being processed and there are two locked gates on these pens. The claimant and co-employee Dan Slocum are the only employees who have keys to the padlocks on these gates. Additionally, the employer uses a three card system to verify the steps are followed prior to processing. A pink card confirms the inspection has occurred, a yellow card confirms the hogs are moved out of the pen and a manila card confirms the pen is empty and locked before the next group of hogs is placed in the pen. The pink card is removed and goes up to the government after the USDA inspection is done and approval is given for the

hogs to be processed. The yellow card is completed with the time the hogs are moved and the time the pen is locked after the hogs are moved. The manila card is removed after an employee from the scale side inspects the pen for any down or dead hogs, makes sure the water works and confirms the gates are locked. After the manila card is removed, the pen is ready for the next group of hogs.

On May 7, 2012, the claimant was the supervisor when 636 hogs were slaughtered without the USDA inspection approval. There were 10,083 hogs killed but 636 of those could not be used because they had not been inspected. This represented an approximate financial loss of \$75,000.00 to the company. The claimant discovered the hogs from Pen 7 had not been inspected during processing. He testified that Mr. Slocum told him to continue running the hogs and he would take care of it. The claimant does not know how it happened and testified that someone else must have unlocked the gates. He also testified that the manila card had been removed by someone, thus leading to the belief that Pen 7 was ready to be used again. The employer considered that the claimant falsified company records by allowing hogs to go through processing when they had not been inspected.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The claimant was discharged on May 7, 2012 for allowing 636 hogs to be processed without a USDA inspection, which resulted in a significant financial loss to the employer. There is insufficient evidence to establish where the problems originated but there can be no doubt that the claimant and his co-employee were negligent, since they were the only ones who possessed the keys to the pen. No hogs could have been moved in and/or out of the pens without those keys. 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 Department of Job Service*, 391 N.W.2d 731 (Iowa App. 1986). Although the claimant referenced an earlier incident, the employer provided no evidence as to a prior incident involving the claimant. Consequently, the evidence only demonstrates a single act of negligence. There is no evidence that the claimant acted with a deliberate disregard of the employer's interests either. Consequently, work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are allowed.

#### **DECISION:**

The unemployment insurance decision dated June 14, 2012, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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