

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICK Y MASAMUNA
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A-UI-19518-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/20/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.1(113)c - Discharge for Violation of Rules

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 24, 2021, (reference 01) unemployment insurance decision that denied benefits based upon claimant being discharged from work on June 17, 2021 for excessive unexcused absenteeism and tardiness after being warned. The parties were properly notified of the hearing. A telephone hearing was held on October 26, 2021. A French interpreter was utilized. The claimant, Patrick Masamuna, participated. The employer, Swift Pork Company, failed to respond to the hearing notice and provide a telephone number at which they could be reached for the scheduled hearing. Judicial notice was taken of the administrative file.

ISSUES:

Did the claimant voluntarily quit without good cause attributable to the employer? Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having heard the testimony and reviewed all of the evidence in the record, the administrative law judge finds: claimant's first day of employment with employer was June 29, 2020 and his last day worked was June 17, 2021. Claimant was a fulltime employee with a set schedule. The employer has rules and policies that address things, including an attendance policy, how different types of absences/tardiness can result in certain points and after so many points, one is terminated. The employee new of this policy, as of June 15, 2021, claimant was sick, but went to work, as he knew if he got any more points, he would be fired. Claimant went to work, was tested for COVID-19, which showed he tested negative. He still was not feeling well and told the company nurse, who sent him to human resources. Claimant advised human resources, who confirmed that if he went home sick, he would have enough points to be terminated, and cautioned him over the consequences. Claimant went home sick. Claimant also missed work on June 16, 2021 due to the illness. Claimant did not go and see a doctor regarding this illness and as such, had no doctor note regarding the illness.

Claimant went to work on June 17, 2021, and was called into human resources, where he was discharged for violation of a known company rule regarding the accumulation of too many points regarding absenteeism and tardiness. Claimant was aware of the rules and aware if he missed work, he would be fired, which is why he reported to work on June 15, as outlined above. Claimant was again warned regarding missing work, but went home, missing the 15th and then missed work on the 16th. Claimant did not attempt to mitigate this by seeing a doctor to be able to provide a doctor's excuse regarding this absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct, and as such, benefits are denied.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the

claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

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).

Further, 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Iowa Admin. Code r. 871-24.1(113)(c) provides:

24.1 Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

113 *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

Claimant was aware of the work rules in this area, knowing if he missed work, he'd point out and be fired, thus knowing his job was in jeopardy. Claimant went to work sick and was warned that if he left, he'd be fired, reminding claimant his job was in jeopardy. Claimant went home and missed the next day as well. Claimant did not attempt to mitigate the absences by going to a doctor and getting a doctor's note excusing the absence. These absences were in violation of known company rules. Claimant was separated from employment for disqualifying misconduct.

DECISION:

The August 24, 2021, (reference 01) unemployment insurance decision is **AFFIRMED**. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Darrin T. Hamilton
Administrative Law Judge

November 9, 2021
Decision Dated and Mailed

dh/scn