

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE M ALVAREZ**

Claimant

**APPEAL NO. 12A-UI-05154-SWT**

**ADMINISTRATIVE LAW JUDGE  
NUNC PRO TUNC DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 03/25/12**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated April 27, 2012, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 29, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Aureliano Diaz participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer from December 15, 2008, to March 28, 2012. He received a final warning on December 21, 2011, for unsatisfactory work performance. He had been working as the blend manager but during the last several weeks, the claimant was working as a production supervisor.

On March 28, 2012, the employer discharged the claimant because the temperature of the trim blend was too high. At that time, another employee, Jessica Jiménez was in charge of the trim blend process. The claimant was not working in that area and was not responsible for the trim blend process.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such

degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The claimant appears to have been blamed for something that he was not in charge of on the day in question.

**DECISION:**

The unemployment insurance decision dated April 27, 2012, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs