

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALLAL BENDRISS

Claimant

APPEAL 16A-UI-11409-CL

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 09/25/16

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 14, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A hearing was held on January 30, 2017, in Ottumwa, Iowa. Claimant participated personally and through interpreter Belaid Hiyani. Witness Najat Lazar testified. Claimant was represented by attorney Philip F. Miller. Employer did not participate. Claimant's Exhibit A was received. Official notice was taken of the administrative record, including appeal numbers 16A-UI-09513-CL and 16A-UI-09049-CL.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 30, 2004. Claimant last worked as a full-time section trimmer. Claimant was separated from employment on August 16, 2016, when he was suspended and later terminated.

On August 16, 2016, a female employee began working in claimant's work area. Claimant nicely asked the employee to move out of his area. The employee refused and stated the spot did not belong to claimant and it belonged to the company. Claimant asked the employee to move away so he could get his tools, which included his knives. The employee refused. Claimant went to the employee's spot to finish up his work. When he arrived at the employee's work area, he found her knives were dull and he could not use them. The employee was using claimant's knives. The claimant asked the employee why she took his spot and tools. Claimant threatened to report the employee to the supervisor. Claimant reported the incident to a supervisor named Ramone. Claimant asked if he could be assigned to another area or if the employee could be assigned to another area. No immediate change was made. Two hours later, claimant took his lunch break. Claimant spoke to Ramone again and asked if he was going to take any action. Ramone told claimant to go back to work and that he would come talk to him later. Approximately 45 minutes after returning to work, claimant was asked to report to

the human resource department. Claimant was informed he was being suspended for punching the female employee. Claimant denied engaging in the conduct. Claimant asked to see video surveillance of his work area, but employer did not show it to him.

Employer conducted an investigation, but did not call claimant during the investigation for a statement.

On September 29, 2016, claimant received a letter from employer stating that after the investigation that employer had terminated claimant effective September 23, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (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. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). 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). 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).

In this case, employer has not established claimant violated any policy or warning or engaged in any other conduct that constitutes misconduct. Although employer alleges it suspended and terminated claimant for physically assaulting another employee, it has not established this occurred. Claimant denies engaging in the conduct. Employer did not participate in the hearing or present any evidence supporting a finding claimant engaged in the alleged conduct. Thus, employer has failed to meet its burden to establish claimant was terminated for job related misconduct.

DECISION:

The October 14, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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