

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DONIS O SIERRA

Claimant

APPEAL NO: 18A-UI-10516-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 09/30/18

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 18, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 5, 2018. The claimant participated in the hearing with Union Representative Brian Ulin. Rogelio Bahena, Human Resources Supervisor participated in the hearing on behalf of the employer.

Mr. Bahena left the call at some point before it was his turn to cross examine the claimant but his phone line was still connected to the call. The administrative law judge called his name several times and waited several minutes before disconnecting and calling him back at which time she received the corporate voice mail but was unable to leave a message. The administrative law judge waited the remainder of the day for Mr. Bahena to call back and offer an explanation for his absence but none was forthcoming. Consequently, Mr. Bahena did not cross examine the claimant and was not available to answer follow-up questions from the administrative law judge.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time multi-vac operator for Swift Pork Company from February 20, 2013 to October 3, 2018. He was discharged for stopping the line after previously receiving a final written warning.

On October 2, 2018, the claimant stopped the line and changed the plastic wrapping on the multi-vac machine. He restarted the line but there was a problem with the other plastic film on the line so he stopped the line again while his co-worker went to fix it. Superintendent Jimmy Greer observed the claimant shut the line down again and saw employees standing around. He did not understand why and asked the claimant why the line was not running. The claimant had successfully bid on a position on the kill floor but had not been moved to that area yet. After

Mr. Greer “screamed” at him, the claimant told Mr. Greer he had another job on the kill floor and if Mr. Greer did not like his work he should move him to the other position. Mr. Greer started yelling at the claimant again and then stated he was going to terminate the claimant's employment. Mr. Greer took the claimant to the human resources office where they watched video of the line being down. The employer determined the claimant did not have a good reason to shut the line down and terminated his employment.

The claimant received a final written warning January 22, 2018, for a lock-out/tag-out safety violation. He removed the guards of the machine and crossed the plane employees are not allowed to cross without shutting down the machine and following lock-out/tag-out procedures. The warning stated that any further violations could result in termination of employment.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant did stop the line on two occasions a few minutes apart October 2, 2018, he did so because there were problems with the plastic wrap on both segments of the line. The claimant disputes that he was walking around following the second stoppage and the employer chose not to submit the video of the incident. The employer also did not make Mr. Greer available to testify. Consequently, the claimant's first hand testimony about their conversation on the floor is more persuasive than the employer's hearsay evidence. Because the video was not provided and Mr. Bahena left the hearing before the administrative law judge could ask him follow-up questions, the claimant's testimony carries more weight than that of the employer. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct on the part of the claimant, as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 18, 2018, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn