

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRETT D GOKEN

Claimant

APPEAL NO. 09A-UI-10152-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY

Employer

**Original Claim: 06/07/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Swift & Company (employer) appealed a representative's July 6, 2009 decision (reference 01) that concluded Brett D. Goken (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 5, 2009. The claimant participated in the hearing. Aaron Vawter appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two, and Three were entered 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 12, 2007. He worked full-time as a production employee on the first shift in the employer's Marshalltown, Iowa, meat processing facility. His last day of work was June 8, 2009.

On June 8 at approximately 11:30 a.m., the claimant was working on a line when one of the other employees threw the head from a carcass past the claimant, knocking the knife out of the claimant's hand so that it nearly hit another employee. The claimant immediately stepped away from the line and went over to the line supervisor to complain. The supervisor demanded that the claimant return to the line and continue working or he would consider the claimant to have voluntarily quit by walking off the line. The claimant returned to the line, but not until insisting that he wanted to meet with human resources on the safety issue.

At approximately 11:45 a.m. the claimant and the supervisor did go to human resources. The claimant attempted to explain what had happened, but the human resources manager told the claimant to turn over his identification badge and clean out his locker, so the claimant did. The

human resources manager later documented that the claimant had been swearing and pointing during the discussion in the office, and that he had quit by leaving the line. The claimant denied that he had sworn or used foul language during the meeting. He admitted he had done some pointing, but that it was at a sign in the office referring to reporting safety violation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he quit by leaving the line. The claimant clearly did not leave the line with an intent to quit, but rather to report a safety violation and to request a meeting on the safety issue. Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was his stepping away from the line to report the safety violation. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 6, 2009 decision (reference 01) is affirmed. The claimant did not voluntarily quit; the employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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