

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IVAN CARRILLO

Claimant

APPEAL NO. 12A-UI-03363-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 02/19/12

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Ivan Carrillo, filed an appeal from a decision dated March 28, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 18, 2012. The claimant participated on his own behalf. The employer, Swift, participated by Human Resources Manager Aureliano Diaz.

The hearing was recessed for the submission of documents. The documents were received by the administrative law judge and the claimant picked up his copy from the guard shack at the employer's place of business. The hearing resumed on Friday, April 20, 2012, as agreed by the parties at the first half of the hearing. The claimant had not changed his phone number and the same number was dialed three times. The only response was a message stating the person's voice mail box had not been set up. Aureliano Diaz was present on behalf of the employer. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Ivan Carrillo was employed by Swift from November 17, 2010 until February 14, 2012 as a full-time production worker. He worked 11:00 p.m. until 7:00 a.m. On January 18, 2012, he was given a warning and was going to be discharged for not returning from lunch. He had gone to lunch and then went to his car, where he "passed out." He was not fired because his supervisor vouched for the fact the claimant had stated earlier in the shift he was not feeling well.

The claimant's last shift began at 11:00 p.m. February 14, 2012, when the claimant again went to lunch and did not return. He stated he had permission from his supervisor, Curtis Depauw, to leave for the day when his inventory was finished. Mr. Carrillo maintained he did not have to notify Mr. Depauw when he was leaving but he did have to punch out. On February 14, 2012,

his ID badge was not working, so he could not use the regular time clock. Instead, he had to sign in and out on a form in the human resources department which he insisted he had done.

On February 15, 2012, he was taken to the human resources office by Mr. Depauw because of the supervisor had been unable to find him the morning before. When Mr. Carrillo insisted he had permission from the supervisor to leave early if he had his inventory done, the supervisor backed him up; but, he was discharged because there was no evidence he signed in or out on the sheets in the human resources department for that shift. He was discharged by Human Resources Representative Aaron Vawter at the beginning of his shift on February 15, 2012. Leaving work without punching out or signing out is considered job abandonment and grounds for immediate discharge.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had been advised his job was in jeopardy as a result of his failure to properly punch out for the end of his shift. The hearing was recessed so that the claimant and the administrative law judge could be provided with the sign out sheets. On those sheets there is no evidence of Mr. Carrillo's signature for his arrival or departure time for the shift which began at 11:00 p.m. February 14 and ended at 7:00 a.m. February 15, 2012.

Whether or not the claimant had permission to leave early if his inventory was completed, it did not relieve him of the responsibility to punch or sign-out. He had been very specifically warned about this and knew failure to do so was grounds for discharge. Mr. Carrillo did not participate in the second part of the hearing to point out any errors on the submitted time sheets nor explain why he did not sign out.

The claimant was discharged after a second offense of job abandonment. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of March 28, 2012, reference 01, is affirmed. Ivan Carrillo is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw