

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ISABELLA I ACOSTA
Claimant

APPEAL NO. 19A-UI-01551-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 01/13/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Swift Pork Company (employer) appealed a representative's February 11, 2019, decision (reference 01) that concluded Isabella Acosta (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 7, 2019. The claimant participated personally. The employer participated by Vicky Cervantes, Human Resources Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 13, 2015, and at the end of her employment she was working as a full-time production supervisor. She signed for receipt of the employer's handbook when she was hired and annually.

On July 25, 2016, when she was an hourly employee the employer issued the claimant a verbal warning for letting too many pieces go down the line. The employer notified the claimant that "further reoccurrence of this matter will result in further disciplinary action". On January 19, 2018, when the claimant was a supervisor, the employer issued the claimant another verbal warning for failure to wear a personal protective equipment item. The employer notified the claimant that she could be terminated if it happened again.

The employer transferred the claimant to a new area in October 2018. In early January 2019, she spoke with human resources about issues in her department. The claimant expressed a need for more help and the right tools. Human resources told the claimant it would have a discussion with the claimant's supervisor.

On or about January 7, 2019, the claimant notified the employer she would be arriving late for work. The claimant's supervisor set up boxes for the claimant to process. When the claimant set up her own boxes, she only put out the number of boxes required. Making too many boxes was a problem for the employer. On January 7, 2019, the claimant processed the work on the boxes the supervisor set out for her to perform.

On January 8, 2019, the supervisor took the claimant to the human resources office and said the claimant processed too many boxes on January 7, 2019. Human resources suspended the claimant for making too many boxes. The claimant believed the supervisor retaliated against her for speaking to human resources about the department. On January 15, 2019, the employer called the claimant and terminated her for "not being a right fit".

The claimant filed for unemployment insurance benefits with an effective date of January 13, 2019. She received \$3,703.00 in benefits after the separation from employment. The employer provided the name and number of Vicky Cervantes as the person who would participate in the fact-finding interview on February 7, 2019. The fact finder called Ms. Cervantes but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's February 11, 2019, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs