

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PIEL A AKUAR**  
Claimant

**APPEAL NO: 14A-UI-09441-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 08/10/14**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's September 4, 2014 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the November 7 hearing with his attorney, Michelle Hoyt-Swanstrom. Cheryl Rodermund represented the employer. Stacey Santillan, the human resource manager, testified on the employer's behalf. Robert Dut Talang interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in October 2009. He worked as a full time general laborer. During the claimant's employment, he received two last-chance agreements. He received the first one in November 2013 for pushing an employee into a wall. He received the second one on June 9, 2014, when the employer concluded he had been insubordinate to a supervisor. The last-chance agreements indicated a violation of the agreement or a violation of the employer's Best Work Environment policy would result in the claimant's termination. The claimant remembered talking to the employer about some incidents, but he had no understanding he received a last-chance agreement.

On August 7, 2014, an employee, P.E., reported the claimant made a sexual gesture to him. Another employee, L.A., reported the claimant touched P.E.'s genital area. The employer's human resource manager at that time, A.D., talked to the claimant. The claimant reported on August 7 that when he was stretching, P.E. hit the claimant in the stomach or the genital area. The claimant reported telling P.E. that was not nice and not to do that again. As a result of P.E.'s report, the employer suspended the claimant on August 7.

After talking to other employees, the employer concluded the claimant participated in inappropriate behavior on August 7 by engaging in horseplay or joking around with other employees. Since the claimant had already received two last-chance agreements, the employer discharged him on August 14 for again violating the employer's Best Work Environment policy.

The claimant established a claim for benefits during the week of August 10, 2014. He filed claims for the week ending August 23 through November 1, 2014. He received his maximum weekly benefit amount of \$404 for each of these weeks.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

When the employer made the decision to suspend and discharge the claimant, the employer had better evidence than what the employer presented at the hearing. The claimant's testimony as to what happened on August 7 is credible. Therefore, more weight must be given to the claimant's version of what happened on August 7 than the employer's reliance on unsupported hearsay information. The credible evidence does not establish that the claimant committed horseplay, violated the employer's Best Work Environment policy or touched another employee inappropriately. The claimant did not commit work-connected misconduct. As of August 10, 2014, the claimant is qualified to receive benefits.

**DECISION:**

The representative's September 4, 2014 determination (reference 02) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 10, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs