

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BLAKE E LARSON**

Claimant

**APPEAL 22A-UI-08594-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 03/06/22**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant0 filed an appeal from the March 29, 2022 (reference 01) unemployment insurance decision that denied benefits finding claimant was discharged on March 9, 2022 for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on May 17, 2022. Claimant participated. Employer did not participate. No exhibits were admitted.

**ISSUE:**

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed as a full-time Refrigeration Technician from December 10, 2012 until his employment with Swift Pork Company ended on March 9, 2022. Employer had a policy that required employees to submit to random Covid-19 testing. On March 9, 2022, employer directed claimant to visit the nurse's station and submit to a random Covid-19 test. Claimant reported to the nurse's station and was given a form to sign as a prerequisite to the test. The form stated that claimant was voluntarily submitting to testing and that claimant would hold employer harmless for any negative effects of the Covid-19 test. Claimant refused to sign the form because the statement regarding voluntary participation was false and he was not comfortable agreeing to hold employer harmless. On March 9, 2022, employer discharged claimant for refusing to sign the form.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes:

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Insubordination does not equal misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.* 367 N.W.2d 300 (Iowa Ct. App. 1985). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *Woods v. Iowa Dep't of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982).

Employer requiring employees to sign a form as a prerequisite for random Covid-19 testing is not reasonable where the release states that the employees are submitting to the test voluntarily and includes a waiver of rights. Claimant's refusal to sign the form was reasonable where the

form inaccurately stated that his participation in the test was voluntarily and included a blanket waiver of rights to recourse. Claimant's refusal to sign the form was in good faith and does not constitute disqualifying job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

**DECISION:**

The March 29, 2022 (reference 01) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.



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May 25, 2022  
Decision Dated and Mailed

acw/ACW