

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VERONICA SALDANA DE VALDEZ
Claimant

APPEAL NO. 11A-UI-06172-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 03/27/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 5, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 8, 2011. Claimant participated through interpreter Ike Rocha. Employer participated through Acting Human Resources Manager Aureliano Diaz.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a production worker from June 18, 2001 and was separated from employment on March 18, 2011. Supervisor Brian Adams received information from an unidentified individual (initials U. U.) that claimant asked him to cut big pieces of meat (spare ribs, feet, cushion meat, and rounds) off and place it in a certain box with neck bones product that coworkers Myra and Francisca had purchased. She admitted packing the boxes and said that Myra and Francisca had nothing to do with it. She argued that Supervisor Raymundo Chavez instructed her to put meat in the boxes but did not tell her what kind to put in there, however, she did not ask him and overheard Francisca tell Chavez she wanted a box of neck bones but still put other cuts in the box besides bones, placing the neck bones on the top layer of the other product in the box. The employer found out about the issue before the boxes left the plant. She knew that Myra and Francisca intended to take the boxes of product out of the plant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Even had Chavez told her to pack the boxes, a reasonable person would have asked him for clarification about what cuts of meat to pack. Since she overheard Francisca asking Chavez for neck bones, she had reasonable knowledge, even without asking or being told, that the other product was not to be packed. Claimant knew that the boxes were going to be removed from the plant and her attempt to conceal the other, more expensive product with the neck bones indicates intent to provide product to Myra and Francisca that they did not purchase. This is at least attempted theft, which is contrary to the duty of honesty she owed to the employer and was misconduct sufficient to warrant a denial of benefits.

DECISION:

The May 5, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw