

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER J WHEELER
Claimant

APPEAL NO. 12A-UI-14171-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 07/15/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Swift Pork Company filed a timely appeal from a representative's decision dated November 21, 2012, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 3, 2013. Claimant participated. The employer participated by Mr. Aureliano Diaz, Human Resource Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Christopher Wheeler was employed by the Swift Pork Company from April 4, 2007 until November 1, 2012 when he was discharged for violation of the company's safety rules. Mr. Wheeler was employed as a full-time loading dock employee and was paid by the hour.

Mr. Wheeler was discharged after he violated the company's strict lock out and safety procedures by failing to properly lock out, chock the wheels and place a "candlestick" on the front of a trailer before unloading it. Claimant was aware that the safety procedures needed to be in place before attempting to unload the trailer that contained inedible product and dry ice. The purpose of the safety rules is to prevent the trailer from being moved, jostled or engaged while an employee is inside performing work.

Mr. Wheeler was aware of the company's strict safety requirements but did not follow them because he was in a hurry to perform his duties to keep a production line running. Claimant had previously been warned about failure to follow company procedures when involved in horseplay with other employees involving the use of company forklifts.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer has sustained its burden of proof in establishing disqualifying job misconduct. It has.

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 employer has the burden of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits.

In the case at hand Mr. Wheeler was discharged because he violated a "cardinal rule" of company safety by failing to follow the company's strict requirement that he lock out a company trailer that he was working in from being moved or otherwise engaged while Mr. Wheeler or any other employee was inside the trailer removing its cargo of inedible product and dry ice. Mr. Wheeler was aware that he was not only required to insert a locking apparatus on the trailer's fifth wheel mechanism but that he was also to chock the wheels and to place a "candlestick" marker in front of the trailer to further prevent any movement or contact with the trailer while employees were working inside. The purpose of the company's safety requirements were to prevent the possibility of serious injury to employees who were working inside of the trailer due to the type of the employer's work and the number of employees performing various duties. It appears the employer instituted its safety procedures to prevent other employees from unknowingly injuring the workers inside. Because of the importance of

the safety rule, employees are informed that they are subject to discharge for safety rule violations. In this case the claimant did not neglect to perform one of the three required procedures but failed to follow any of the three procedures that were required by the company's safety policy.

In this case the administrative law judge is mindful that it is the claimant's position that he "forgot" to follow the safety requirements. The administrative law judge concludes, however, that the evidence in the record establishes that the claimant's carelessness or negligence in failing to follow any of the three required safety procedures was carelessness or negligence of such a degree and showed a substantial disregard of the employer's interests and standards of behavior that an employer has a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

DECISION:

The representative's decision dated November 21, 2012, reference 02, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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