

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWN M BABBERL**  
Claimant

**APPEAL NO. 09A-UI-19530-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY / JBS**  
Employer

**Original Claim: 04/19/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Shawn M. Babberl (claimant) appealed a representative's December 15, 2009 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Swift & Company / JBS (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2010. The claimant participated in the hearing. Cheryl Hughlette appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 2, 2006. He worked full-time as a first shift production worker on the loin boning line of the employer's Marshalltown, Iowa pork processing facility. His last day of work was November 27, 2009. The employer discharged him on that date. The reason asserted for the discharge was refusing to work by following a supervisor's instruction.

On November 27 the claimant was carrying a watch provided by the employer that he had synchronized with one of the supervisors. Earlier in the afternoon, another supervisor had told the claimant that the line should be stopped at 2:15 p.m. When the claimant's watch hit 2:15 p.m., he stopped the line; the two workers who were the first processors on the line left immediately. The claimant's direct supervisor then told the claimant to keep the line running. When the claimant attempted to question her instruction, indicating that he had been told to stop the line at 2:15 p.m., she repeated her instruction. The claimant then attempted to restart the line for a few minutes. It was subsequently determined that the claimant's watch was off from his immediate supervisor's watch by 40 seconds. As a result of this incident, following some prior warnings primarily for safety issues, the employer discharged the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-

a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his stopping the line and then questioning the supervisor's instruction to keep the line going. The claimant reasonably relied upon the fact that his employer-provided watch had been synchronized with a supervisors watch and that another supervisor had instructed that the line be shut down at 2:15 p.m. Under these circumstances, the claimant's questioning of his immediate supervisor's apparent contradictory instruction was not inappropriate and was not a refusal to work, but rather was a reasonable attempt to seek clarification. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's December 15, 2009 decision (reference 03) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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