

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PEDRO A PEREZ**  
Claimant

**APPEAL NO. 10A-UI-06159-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 03/21/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated April 13, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 10, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Jennifer Mora participated in the hearing on behalf of the employer. Exhibits 1-3 were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time as a production worker from September 19, 2007, to March 23, 2010. He had been warned on June 19, 2009, about not doing his job and displaying a negative attitude to his supervisor. On January 12, 2010, the employer warned him about behaving professionally and engaging in horseplay.

On March 23, the claimant was in the process of going on break. His safety glasses were covered with blood, and he took them off to clean them. A supervisor from another area spotted the claimant without his safety glasses and angrily yelled at him to put the glasses on. The claimant tried to explain what he was doing, but the supervisor would not listen. The claimant shrugged, lifted his hands up, and said whatever. The supervisor falsely believe the claimant had displayed his middle finger to the supervisor. He then yelled at the claimant that he needed to go the office and was going to get written up. The claimant asked the supervisor to calm down and stop yelling, but did no good. The claimant became upset in the human resources office with the supervisor hostile tone so he told the supervisor to shut up. The supervisor reported to the human resources manager that the claimant had told him to shut up and directed profanity toward him. The human resources manager then discharged the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. No willful and substantial misconduct has been proven in this case. While I don't condone the claimant telling the supervisor to shut up, he was provoked by the supervisor's harsh tone and constant yelling.

**DECISION:**

The unemployment insurance decision dated April 13, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs