

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARVELL L GAMBLIN

Claimant

APPEAL NO: 14A-UI-08363-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 05/04/14

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 5, 2014 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for nondisqualifying reasons. The claimant participated at the September 3 hearing. Stacey Santillan, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct or did the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in September 2013. He worked as a full-time mechanic. Prior to February 26, 2014, the claimant's job was in jeopardy for attendance issues.

The employer's written attendance policy informs employees they will be discharged if they accumulate nine attendance points. On February 7, 2014, the claimant received a warning informing him he had accumulated five attendance points. On February 13, the claimant received two more attendance points.

On February 26, a co-worker threw a bag at the claimant. The bag hit the claimant's leg. The co-worker also threatened the claimant. The claimant reported the incident to his supervisor. The employer sent the claimant home so the employer could investigate the incident. Before the claimant went home, the employer talked about moving the claimant to another department so the two men would not work in the same department. The claimant did not believe it was fair for the employer to move him when the co-worker started the problem. The claimant understood the employer would contact him after the employer completed its investigation into the incident.

The claimant called in on the attendance phone line on February 28, March 1, 4 and 5, to report he would not be at work until the employer scheduled a meeting with him. From his union steward, the claimant understood the employer would arrange a meeting and the claimant was waiting for the employer to contact him about when he was to report back to work.

The employer's records indicate the claimant did not call after March 5. As of March 14, the employer discharged the claimant because he had violated the employer's attendance policy by accumulating 11 attendance points as of March 5. The employer did not receive any documentation indicating why the claimant had not been at work since February 26, 2014.

The claimant established a claim for benefits during the week of May 4, 2014. He filed claims for the weeks ending May 10 through August 30, 2014. He received all of his benefits as of the week ending August 30, 2014, or \$6843.70. The employer did not satisfy the participation requirements.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts establish the employer discharged the claimant.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.
- 4.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer asserted the claimant was discharged because he violated the employer's attendance policy by accumulating too many attendance points. Unfortunately, the employer's witness did not have any personal knowledge about the February 26 incident and had no personal knowledge what the claimant was told on February 26. The claimant's testimony that the employer sent him home after he reported another employee hit and threatened him is credible. Before the employer sent the claimant home on February 26, the employer told the claimant the February 26 incident would be investigated. The claimant understood the

employer would contact him after completing the investigation. The evidence does not establish that the employer contacted the claimant after completing its investigation.

The evidence demonstrates a communication breakdown occurred after February 26. The employer assessed the claimant attendance points after February 27. The claimant waited for the employer to call him for meeting after the employer finished investigating the February 26 incident. As a result of the communication breakdown, the facts do not establish that the claimant committed work-connected misconduct. Even though the claimant did not work after February 26, he had a reasonable explanation why he was not at work – he understood the employer would contact him to let him know when he could report back to work. As of May 4, 2014, the claimant is qualified to receive benefits.

(Note: Even if the employer discharged the claimant for work-connected misconduct, the record indicates that as of the date of the hearing the claimant had received all the benefits he was entitled to receive or a gross benefit payment of \$6,843.70 for the weeks ending May 10 through August 30, 2014. The employer's account is charged for this amount because the employer did not satisfy the participation rule. With the exception of the claimant being required to earn requalifying wages before he can receive benefits in a second benefit year, the results are basically the same under either scenario.)

DECISION:

The representative's August 5, 2014 determination (reference 02) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 4, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css