

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES E HARMON
Claimant

APPEAL NO: 14A-UI-10679-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 08/31/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a- Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 1, 2014 determination (reference 01) 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 November 3 hearing with his attorney, Joanie Grife. Robin Moore represented the employer. Stacy Santillan, the human resource manager, testified 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?

FINDINGS OF FACT:

The claimant started working for the employer in December 2013. The employer hired him to work as a full-time scale technician. During his orientation, the employer told the claimant that if he violated any of the employer's cardinal rules, he would be discharged. The cardinal rules involved safety issues such as lock-out/tag-out procedure and the hot glove policy. The claimant received training on the lock-out/tag-out procedure, but did not receive hot glove training.

The claimant's job was not in jeopardy before August 26, 2014. On August 26, the claimant was called to look at a hair metal detector. When the claimant arrived at the metal detector, he put his lock on the switch. Even though the claimant had locked the switch, when he opened the electrical panel there still power on inside the box. He took the lock off the switch so he could move the switch in an attempt to de-activate the energy in the electrical box. When he was not successful, he contacted a supervisor and told him that he could not do the job because he did not have hot glove training. The supervisor called J.P., the superintendent. Before J.P. arrived, the claimant went back to the electrical box and again moved the switch back and forth to de-activate the energy going into electrical box. When J.P. arrived the claimant left the platform when the electrical box was located. Another manager, S., climbed onto the platform

and J.P. told him to put his lock on. While S. worked, J.P. lectured the claimant about the lock-out/tag-out procedure and the hot glove procedure.

A short time later, the employer suspended the claimant for safety violations. The employer concluded the claimant not only failed to follow the lock-out/tag-out procedure but also failed to follow the hot glove policy. The employer also concluded the claimant was actually in the electrical box with live or hot wires. The claimant knew it was dangerous to work with hot wires and was not in the electrical box. On September 8, the employer discharged the claimant for safety violations, failure to follow the lock-out/tag-out and hot glove procedures.

The claimant established a claim for benefits during the week of August 31, 2014. He has filed for and received benefits since August 31, 2014.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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.

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).

Based on reports from management personnel who did not testify at the hearing, the employer established business reasons for discharging the claimant. The claimant's credible testimony, however, must be given more weight than the employer's reliance on information from management personnel who did not testify at the hearing. The evidence establishes the claimant did not receive hot glove training and did not violate the employer's hot glove policy on August 26.

The claimant understood the employer's lock-out/tag-out procedure and initially locked out the metal detector. After the claimant noticed the electrical box was still energized when he had his lock on it, he assumed the switch did not de-activate the energy and tried to toggle it back and forth. To do this, he had to take off the lock. When moving the switch back and forth did not work, he notified a supervisor that he could not do the required work. The claimant may have used poor judgment when he took off the lock in an attempt to get the switch to work, but his

actions do not amount to work-connected misconduct. As of August 31, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's October 1, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 31, 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