

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELTOUM TAWR
Claimant

APPEAL NO. 12A-UI-09947-W

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

**OC: 07/01/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a fact-finding decision dated August 10, 2012, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on December 18, 2012, in Des Moines Iowa. Claimant participated through attorney Christopher Rottler. Employer is Swift Pork Company, now known as JBS. It participated by Human Resources Assistant Manager, Javier Sanchez. International Translation Services provided an Arabic interpreter, Almradi Abdalla, who translated the entire hearing. Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant was a full-time production laborer. He was discharged on July 5, 2012, by employer for refusing to return to work and violation of the employer's "best work environment" policy. On that date, the claimant experienced stomach issues and used the restroom. Upon returning to the line, he was approached by his supervisor, James Corder. Mr. Corder told the claimant to report to the H.R. office. In the H.R. office, claimant interacted with Javier Sanchez. The testimony is disputed.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning "best work environment." The employer's essential allegations are that the claimant (a) refused a directive of his supervisor and was rude to him and (b) refused to return to work when instructed by the H.R. office.

The employer has failed to meet its burden of proof that claimant yelled at his supervisor or that he disobeyed a work directive to return to the line. The claimant is found more credible than the

employer's hearsay evidence. He was told by his supervisor to go to the H.R. office. He was not told to go back to the line which was the hearsay testimony provided by Mr. Sanchez. Mr. Sanchez did testify directly about what happened in the H.R. office. Unfortunately Mr. Sanchez did not recall key details about the interaction and it is not well documented. Claimant again is found more credible in his testimony that he never refused to return to work.

DECISION:

The fact-finding decision dated August 10, 2012, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs