

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KHEN K KAP
Claimant

APPEAL NO: 15R-UI-02323-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 11/02/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 3, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account exempt from charge because the claimant had been discharged for non-disqualifying reasons. A hearing was held January 13, 2015. The claimant did not respond to the hearing notice but the employer participated at the hearing. Based on the evidence presented at the January 13, 2015 hearing, an administrative law judge reversed the determination and concluded the claimant was not qualified to receive benefits. See decision for Appeal No. 14A-UI-12890.

The claimant appealed the decision for Appeal No. 14A-UI-12890 to the Employment Appeal Board. The Employment Appeal Board remanded this matter for a new hearing because the claimant, a non-English-speaking person, did not understand the information on the hearing notice.

Another hearing was scheduled on March 26, 2015. The claimant participated at this hearing. Tom Kuiper represented the employer. Stacy Santillan, the human resource manager, testified on the employer's behalf. Blake Richards observed the hearing. Ceu Hlun interpreted the hearing. 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 May 2013. He worked as a full-time laborer. Prior to October 27, 2014, the claimant's job was not in jeopardy. In May 2013 and on May 28, 2014, he watched a training video on how to humanely treat animals at work. The claimant signed off that he had completed training on how to humanely treat animals. The training video was not in the claimant's native language, Burmese. When the claimant signed off on the training he did not indicate nor was he asked if he understood the training he received. On March 26, 2015, the claimant could not remember what the training video said about how to treat or handle hogs.

The claimant's regular job involved putting hooks in the feet of hogs. On October 27, 2014, an employee asked the claimant to move a hog. The claimant tried a couple of times to push the hog, but the hog was too heavy for him to push. The claimant had no understanding that he was to contact a supervisor when there were problems moving a hog. To move the hog that another employee asked him to move, the claimant took the hind legs of the hog and dragged the hog to move it.

On October 27, 2014, a USDA inspector saw the claimant pull a live hog by its hind feet. The USDA inspector considered this an inhumane way to handle an animal. After the USDA inspector saw this, the plant was shut down for two hours.

When the employer talked to the claimant on October 27, 2014, he admitted he dragged the hog by its hind feet. Even though the claimant's job was not in jeopardy before October 27, the employer discharged him for this incident that a USDA inspector witnessed.

The claimant established a claim for benefits during the week of November 2, 2014. He has filed for and received benefits since November 2, 2014. The employer participated at the fact-finding interview.

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).

The employer established a justifiable business reasons for discharging the claimant. Even though the employer had the claimant watch training videos and he signed papers that he had watched a training video, the evidence indicates the claimant did not understand that the employer considered it inhumane treatment to drag a hog by its hind feet. The facts indicate that the claimant's position did not usually involve moving a hog. When another employee told him to move a hog, the claimant tried to push the hog but could not. The claimant used poor judgment when he moved the hog by pulling it by its hind feet.

Even though the claimant violated the employer's policy on how to move a hog, the facts do not indicate that he intentionally disregarded the standard of behavior the employer has a right to expect from employees. This isolated incident of poor judgment does not rise to the level of work-connected misconduct. As of November 2, 2014 the claimant is qualified to receive benefits.

DECISION:

The representative's December 3, 2014 (reference 01) determination is affirmed. The employer discharged the claimant for justifiable business reasons, but this one incident where the claimant used poor judgment does not rise to the level of work-connected misconduct. As of November 2, 2014 the claimant is qualified to receive benefits. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can