

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELIA L AGUILERA
Claimant

APPEAL NO. 11A-UI-05147-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 02/27/11
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Swift Pork Company filed a timely appeal from an unemployment insurance decision dated April 6, 2011, reference 01, that allowed benefits to Delia L. Aguilera. After due notice was issued, a telephone hearing was held May 17, 2011 with Ms. Aguilera participating. Employment Coordinator Neysa Hartzler participated for the employer. Ann Pottebaum served as interpreter.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Delia L. Aguilera was employed by Swift Pork Company from September 4, 2000 until she was discharged March 3, 2011. She was a production worker. The final incident leading to her discharge occurred on February 25, 2011. Ms. Aguilera cut two of her fingers while operating a band saw. She was wearing her protective equipment and following established procedures. A safety bar was in place.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for disqualifying misconduct. It does not.

Iowa Code § 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.

The employer has the burden of proof. See Iowa Code § 96.6-2. Among the elements it must prove is that the final incident leading directly to discharge was a current act of misconduct. See 871 IAC 24.32(8).

The parties agreed that the accident occurred. Neither party was able to offer testimony as to why it occurred. The administrative law judge concludes that the employer has failed to establish that Ms. Aguilera was deliberately failing to follow safety procedures or that she was careless or negligent. Based upon the evidence in this record, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated April 6, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs