

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT R CLAPSADDLE
Claimant

APPEAL NO: 13A-UI-03169-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 02/10/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 6, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Luis Menza, the human resource supervisor, 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 not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

In June 1989, the claimant started working for the employer as a full-time machine operator. During his employment, the claimant received safety training about the employer's lock-out/tag-out procedure. The employer gave the claimant his own set of locks and tags. One of the employer's seven cardinal rules informs employees they will be discharged if they violate a safety rule such as the lock-out/ tag-out procedure.

On February 6, 2013, the claimant had problems with warped boxes going through the line. A representative from the company who supplied the boxes was present. The claimant saw the representative do a quick fix to get boxes moving. He opened up a door on the machine, turned a key that cut off the electricity to the machine, and with his hand pulled the box out. That morning was difficult because there were on-going problems with boxes and the claimant wanted to keep the line moving.

When there was a problem with a box being stuck in the machine, the claimant opened a door on the side of the machine and turned a key to turn off the electricity. The claimant quickly pulled the warped box back and out. His hand was not by moving part. The claimant had been trained to put a lock and tab on the machine when he did this. It would have taken the claimant an additional 30 to 45 seconds to put his lock and tag on the machine.

The claimant's supervisor saw the claimant unjam a box as described or without first locking out and tagging the machine. When the supervisor saw the claimant do this, he told the claimant to stop. The employer suspended the claimant on February 6 for failing to follow the lock-out/tag-out procedure. After talking to the claimant, he admitted he had not followed the lock-out/tag-out procedure because he wanted to keep the process moving. The employer discharged him on February 18, 2013. Even though the claimant's job was not in jeopardy before, the employer's cardinal rule policy required the claimant to be discharged for this one incident.

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).

On February 6, 2013, the claimant was negligent when he failed to use the lock-out/tag-out safety procedure. Even though he turned off the energy to the machine before he tried to unjam a box, he violated the employer's safety procedure because he wanted to keep the process going instead of taking 30 to 45 seconds to properly lock and tag the machine. Even though the claimant had not done this before and his job was not in jeopardy before February 6, this incident amounts to an intentional and substantial disregard of the employer's safety rules. The claimant committed work-connected misconduct. As of February 10, 2013, the claimant is not qualified to receive benefits.

DECISION:

The representative's March 6, 2013 determination (reference 01) is affirmed. The employer suspended the claimant on February 6 and discharged him on February 18, 2013, for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 10, 2013. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css