

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ADYAL L BROYLES

Claimant

APPEAL 23A-UI-06944-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 06/11/23

Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On July 13, 2023, employer Swift Pork Company filed an appeal from the July 3, 2023 (reference 01) unemployment insurance decision that allowed benefits after a June 15, 2023 separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Monday, July 31, 2023. Claimant Adyal L. Broyles participated. Employer Swift Pork Company participated through Yolanda Magana, HR Generalist. Employer's Exhibits were not admitted into the record because they were not provided to the claimant prior to the hearing. The administrative law judge took official notice of the administrative record for the limited purposes of determining the overpayment amount (if any) and whether the employer participated in the fact-finding interview.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on March 16, 2020. Most recently, he worked full-time hours as a three-pusher. Claimant's employment ended on June 15, 2023, when the employer discharged him for workplace violence.

On June 12, 2023, claimant got into an altercation with a coworker. Claimant and his coworker were both having "bad days," and what started as claimant inquiring about his coworker's glasses led to the two exchanging snipes and profanity. During this altercation, claimant's coworker told claimant he would "kill him out in the parking lot." Claimant got up into his coworker's face and pushed his coworker's shoulder with his chest. The coworker responded by pushing claimant back.

Claimant went to HR and reported that his coworker threatened to kill him outside the employer's facility. HR specifically asked claimant if he responded in any way, and claimant denied responding to the coworker at all. Magana investigated the incident by reviewing video footage and saw claimant push his coworker with his chest, making the initial physical contact.

Based on the severity of the incident, the employer discharged both employees from employment. The employer maintains a zero-tolerance policy and approach to workplace violence. Claimant was aware of this policy and he knew his job would be in jeopardy if he engaged in workplace violence. The employer strictly enforces this policy, when supervisors and/or HR are notified about the workplace violence at issue.

The administrative record reflects that claimant has not received unemployment insurance benefits since filing a claim with an effective date of June 11, 2023, for the one week ending June 17, 2023. Claimant's claim is currently locked due to a failure to verify his identity by providing identity verification documentation to Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying misconduct.

Iowa Code section 96.5(2)(a) and (d) provide:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 even 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. Misconduct by an individual includes but is not limited to all of the following:

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employee should avoid the use of force when involved in an altercation at the workplace and has a duty to retreat if provided with a reasonable opportunity. Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995). 6A C.J.S. Assault & Battery § 19, at 343-44 (1975).

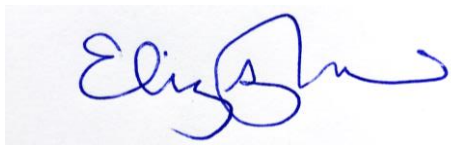
Employers generally have an interest in protecting the safety of all employees and invitees. Claimant's response to his coworker's threat of future violence was to initiate immediate physical aggression. Claimant was not acting in self-defense, because there was no necessity to initiate a physical fight or defend himself physically against words threatening potential violence in the future. Claimant could have left the area immediately and reported his coworker to HR. By engaging his coworker rather than immediately leaving the area and reporting the threat to HR, claimant violated specific work rules and acted against commonly known acceptable standards of work behavior. Claimant's behavior was contrary to the best interests of employer and the safety of its employees, and it amounts to disqualifying misconduct even without prior warning. Benefits are denied.

Because claimant has not received benefits since opening his claim, the issues of overpayment and chargeability are moot.

DECISION:

The July 3, 2023 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The issues of overpayment and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge

08/01/23
Decision Dated and Mailed

EAJ/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.