

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP J GAVAGAN
Claimant

APPEAL NO. 10A-UI-01706-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 01/10/10
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Phillip Gavagan filed an appeal from a representative's decision dated January 28, 2010, reference 01, which denied benefits based on his separation from Swift & Company. After due notice was issued, a hearing was held by telephone on March 15, 2010. Mr. Gavagan participated personally. The employer opted not to participate.

ISSUE:

At issue in this matter is whether Mr. Gavagan was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gavagan was employed by Swift from March 16, 2009 until January 13, 2010. He worked full time operating a forklift on the loading dock. His discharge was prompted by an allegation that he failed to properly wrap product before loading it. He was to shrink-wrap the pallet and combo from top to bottom. The truck he loaded was partially done by an individual on the shift prior to his. Mr. Gavagan properly wrapped the items he loaded on the truck but had no way of knowing that the previous loader had not fully wrapped items he loaded.

Based on the fact that product was not properly wrapped, Armour filed a claim against Swift. The claim involved two trucks but Mr. Gavagan was only involved in partially loading one of them. He had received a warning on December 17 because he failed to adequately wrap product. He was notified of his discharge on January 13, 2010.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was

triggered by a current act of misconduct. 871 IAC 24.32(8). In the case at hand, it was alleged that Mr. Gavagan failed to properly shrink-wrap product. The employer failed to establish that he failed to properly wrap the product or that he knowingly allowed improperly wrapped product to leave the facility.

There were two trucks involved in Armour's claim against Swift, only one of which Mr. Gavagan worked on. The individual who loaded part of the truck that Mr. Gavagan loaded had loaded the other truck involved in the claim. Given these factors, it seems more likely than not that the other individual was responsible for the improper wrapping on both trucks. For the above reasons, it is concluded that the employer failed to establish misconduct on Mr. Gavagan's part as it related to this incident. The next most prior disciplinary action was on December 17, 2009 and would not, therefore, represent a current act in relation to the January 13, 2010 discharge.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proof in this matter. While the employer may have had good cause to discharge, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated January 28, 2010, reference 01, is hereby reversed. Mr. Gavagan was discharged by Swift but a current act of misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs