

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VEDDY OSAKANU

Claimant

APPEAL 17A-UI-05965-CL

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 05/14/17

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 2, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held in Des Moines, Iowa, on June 30, 2017. Claimant participated personally and through French interpreter Benjamin Mumanira. Employer participated through human resources manager Nicholas Aguirre. Employer's Exhibits 1 through 3 were received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 13, 2016. Claimant last worked as a full-time general laborer. Claimant was separated from employment on May 2, 2017, when she was suspended without pay and later terminated.

Employer has a workplace violence policy prohibiting violent acts including hitting, shoving, and pushing. Employer also has a policy prohibiting refusal to work/disobedience. Claimant was aware of the policies.

On May 2, 2017, claimant was asked by her supervisor Mountassir Kente to perform a different job or task. Claimant refused to perform the task. Claimant refused the request because she was not finished with her previously assigned work and her hand hurt. However, claimant did not give Kente her reasons for refusal. Kente then asked claimant to relieve co-worker Khine Pein from his duties so he could use the restroom. Claimant said no. She became upset and began waving her hands in the air wildly. Claimant hit Pein in the face, causing his safety glasses to break. Claimant was immediately suspended without pay.

Employer investigated the incident. Kente gave a statement that claimant refused his instructions and hit a co-worker in the face, breaking his glasses. Pein corroborated the

statement and added there was blood and meat on claimant's glove that landed on his face. A third witness did not see the incident occur, but did observe Pein's broken glasses. When claimant was interviewed, she went back and forth between denying and admitting the conduct.

On May 4, 2017, claimant was terminated.

Claimant had never been previously warned regarding similar conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of

unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant violated employer's workplace violence policy when she struck her co-worker in the face and broke his glasses. Even if claimant did not intentionally strike her co-worker in the face, she intentionally created body movements that she knew or should have known could result in harm to individuals standing nearby. This is in deliberate disregard of employer's interests in maintaining a safe workplace, especially in light of the fact that there were sharp instruments, such as knives, close by. Employer has established claimant was terminated for job-related misconduct, even without prior warning.

DECISION:

The June 2, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/scn