

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL V VARGAS**  
Claimant

**APPEAL NO. 13A-UI-14042-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 11/17/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated December 11, 2013, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 15, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with a witnesses, Benito Sanchez and Gabriela Vargas, and with the assistance of an interpreter, Ike Rocha. Aureliano Diaz participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a loading-dock worker from July 17, 2012, to October 20, 2013. The claimant and other dock employees received a written warning in January 2013 because the candlestick device that used to hold up the trailer after the tractor is disconnected was not properly attached. The claimant had attached the candlestick device but the equipment was in disrepair and loosened up. The claimant and other employees had complained about this.

On October 30, 2013, the claimant made a mistake and put the wrong tag on a trailer, which could have resulted in a driver moving a trailer while it was being loaded or unloaded. This was not deliberate but was the result of the claimant neglecting to do his job carefully.

The employer discharged him based on the January warning and October 30 incident.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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 substantial and 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).

No willful misconduct has been proven in this case. No recurrent negligence equaling willful misconduct. The preponderance of the evidence establishes the incident in January was not due to the claimant's negligence but was an equipment problem. The Iowa Court of Appeals has ruled 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. IDJS, 391 N.W.2d 731 (Iowa App. 1986). At most the evidence would show a single instance of negligence and no deliberate disregard of the employer's interests. Disqualifying misconduct has not been shown.

#### **DECISION:**

The unemployment insurance decision dated December 11, 2013, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/pjs