

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMIE HABONIMANA
Claimant

APPEAL NO. 10A-UI-12225-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 08/01/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 24, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing with his attorneys, Chuck Cutler and Amanda Rutherford. Jenny Mora, the employment manager, appeared on the employee's behalf. Liliane Mugeni interpreted the hearing. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in May 2008. He worked as a full-time production employee. The employer's rules inform employees that if they refuse to perform a job, they will be discharged.

On July 23, 2010, the claimant burned two fingers. His job required him to use a tool that used steam. The claimant did not report this injury on July 23. He called in sick on July 24. On Monday, July 26, the claimant came to work and reported this injury. The job the claimant was doing when he burned his fingers required him to wear gloves. The claimant did not have gloves. He had been asking his supervisor for two weeks for gloves. When the claimant was able to borrow a co-worker's gloves, he did.

The claimant burned his right wrist doing the same job on Thursday, July 29. Again, the claimant did not have gloves to wear. On July 30, the claimant was in pain as a result his work-related injuries. The employer sent him to the on-site medical center, when he asked for another job. A nurse wrapped his wrist and told him he could go back to work. However, he was told that if his pain persisted, he should come back to the employer's medical center. After the claimant saw the nurse, he asked the employer for another job. The claimant knew other employees who had been assigned another job after they had been burned. The claimant wanted his injury to heal. The claimant's supervisor would not assign him to another job. Instead, the employer told the claimant that if he refused to do the assigned job, he would be discharged and needed to go home and turn in his ID badge. After the claimant was discharged, he sought medical treatment for his burn. (Claimant Exhibit A.)

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

In this case, the claimant's testimony must be given more weight than the employer's reliance on hearsay information from people who did not testify at the hearing. Therefore, the findings of fact reflect the claimant's version of the events.

After the claimant received a second burn on July 29 on his wrist, it was not unreasonable for him to request another job until his injuries healed. Since the claimant's job was not in jeopardy for attendance issues on July 30, it is difficult to understand why the employer did not suggest that the claimant go home early instead of discharging him. Even though a nurse wrapped the claimant's wrist, he was in pain. The facts do not establish what additional treatment the claimant received for this pain. Even though the employer discharged the claimant pursuant to a work rule, the facts do not establish that the claimant committed work-connected misconduct. Therefore, as of August 1, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's August 24, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 1, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw