

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CALVIN J MCCOY**  
Claimant

**APPEAL NO. 11A-UI-14908-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 10/16/11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 7, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 12, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. 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 manager from April 2005 to October 3, 2011. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant worked long hours and normally worked seven days a week. He was often called in to work at 5:00 a.m. after working late the day before. In April 2011, the claimant was late for work and had a discussion with the human resources manager. In the discussion the claimant stated that he was getting burned out by the number of hours he was working and requested help, and also said he had problems at home because his son has diabetes. The claimant continued to regularly work seven days per week and the employer did not provide assistance to the claimant in regard to his concerns.

On September 23, the claimant worked 16 hours. He was required to work at 5:30 a.m. on September 24. He was 45 minutes late for work. On September 29, 2011, the claimant was placed on a last-chance agreement and informed that if he was late or absent again, he would be discharged.

The claimant worked 14 hours on October 2, 2011, and left work at 6:30 p.m. He was required to report to work at 5:00 a.m. on October 3, 2011. The claimant did not have enough time to recover from all the overtime hours he was working. He woke up to his alarm at 3:45 a.m., but

did not feel well so he hit the snooze button and slept until about 7:00 a.m. He called in to notify the employer that he was going to be late and arrived at about 7:40 a.m. He was informed that he was terminated due to violation of the last-chance agreement.

### **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 (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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The final absences were due to working too many overtime hours, which put the claimant at the point of physical and mental exhaustion.

### **DECISION:**

The unemployment insurance decision dated November 7, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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