

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FRANKLIN G MORADEL**  
Claimant

**APPEAL NO: 13A-UI-06804-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 04/28/13**  
**Claimant: Appellant (2)**

Iowa Code 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's May 24, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Luis Meza, the human resource supervisor, appeared on the employer's behalf. Rafael Geronimo interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working full time for the employer in November 2011. When the claimant started working, he received a copy of the employer's attendance policy in Spanish. The policy informs employees that if they do not call or report to work for three consecutive days, the employer considers them to have voluntarily quit. The claimant understood that if he did not call or report to work for three days, the employer could end his employment.

Prior to April 8, the claimant's job was not in jeopardy. The last day the claimant worked was April 6, 2013. He called the employer on April 8 to report he was unable to work.

On April 8, the claimant was arrested because he had problems with his girlfriend. A law enforcement official placed a call to the employer and the claimant told the employer that he was unable to report to work. The claimant was in jail for seven days because he did not have access to his money for bail until his sister came. When the claimant was in jail, he did not have access to a phone and could not call the employer. The claimant was released from jail on April 15 or 16. The claimant called the employer after he was released and explained what had

happened. The claimant asked if he could use vacation days to cover the last week he had been unable to work. The employer indicated a decision would be made in a few days. Three days later the employer called and told the claimant he no longer worked for the employer. The employer no longer considered the claimant an employee as of April 18, 2013.

The charges that resulted in the claimant's arrest were dismissed.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant intended to quit his employment. If the claimant would have had his wallet or access to his money, he could have paid the bail money, been released from jail and worked. The claimant contacted the employer when he could on April 8 and as soon as he was released from jail.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant was released from jail and called the employer before April 18, the date the employer testified was the claimant's termination date. Since the claimant's job was not in jeopardy prior to April 8, he contacted the employer when he could and the charges were ultimately dismissed, the evidence does not establish that the claimant intentionally or substantially disregarded the employer's interests. The claimant may have used poor judgment that resulted in his arrest, but he did not commit work-connected misconduct. As of April 28, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 24, 2013 determination (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer initiated the employment separation and discharged the claimant for business reasons. The claimant did not commit work-connected misconduct. Therefore, as of April 28, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs