

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MIAN Y TONG**

Claimant

**APPEAL NO: 09O-UI-09929-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**

Employer

**OC: 03/22/09**

**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Swift & Company (employer) appealed a representative's April 8, 2009 decision (reference 01) that concluded Mian Y. Tong (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was initially held on May 18, 2009. The employer participated in the hearing, but the claimant did not. The claimant appealed the decision that was issued on May 20, 2009. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing.

After hearing notices were again mailed to the parties' last-known addresses of record, an in-person hearing was held on August 25 in Des Moines. The claimant participated in the hearing with his attorney, Donald Wine. Aaron Vawter, a human resources coordinator, appeared on the employer's behalf. Frances Chan interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on June 2, 2008. The claimant worked full time as a second-shift production employee on the kill floor.

The claimant's most recent job was cutting off bungs, a part of a hog. On March 20, the employer was short-staffed. The employer asked the claimant to work in the barn that day and move hogs. The claimant went with his supervisor to the barn, but then his supervisor left without telling him how or what he needed to do. When a driver approached the claimant, the claimant told him he did not know what to do. Instead of explaining what the claimant needed to do, the driver called someone.

After the driver made the call, the claimant was asked to go to the office. When the employer asked the claimant for his ID card because he refused to do the job the employer asked him to do, the claimant became upset. The employer asked the claimant to return all of the equipment the employer had assigned him. On Monday, March 23, the claimant returned the rest of the equipment. The claimant's job had not been in jeopardy prior to March 20, 2009.

Although the employer concluded the claimant refused the job in the barn because he did not like the smell, the claimant denied this. The claimant's regular job was harder than the job the employer asked him to do on March 20 and the odor where the claimant worked was no more offensive than the odor in the barn.

### **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 section 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).

When the employer asked for the claimant's ID and that he return all employer-issued equipment, the employer understood the claimant refused to work in the barn. Based on this understanding, the employer discharged the claimant for justifiable business reasons. Even though the claimant may understand English, the evidence indicates there was a communication problem on March 20. The claimant went to the barn with the intention of working in the barn that day, but no one told him or explained what to do or how to do this job. The claimant had not done this job before. Instead of explaining what he needed to do, a driver called someone that resulted in the claimant being called to the office. The evidence does not indicate who the driver contacted or what he reported. Under these facts, the evidence does not establish that the claimant refused to do the job the employer asked him to do on March 20. Therefore, the claimant did not commit work-connected misconduct. As of March 22, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's April 8, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 22, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs