

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABEL L CASTRO

Claimant

APPEAL NO: 10A-UI-13682-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY

Employer

OC: 08/22/10

Claimant: Appellant (2)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 29, 2010 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held November 17, 2010. The claimant participated in the hearing. Tonya Box, a human resource assistant, appeared on the employer's behalf. 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 for the employer in May 2009. The claimant worked full time. Prior to January 19, 2010, the claimant had no understanding his job was in jeopardy or that the employer considered him to have an attendance problem.

The claimant worked as scheduled on January 15, 2010. He was scheduled to work on Saturday, January 16, but did not because he was arrested. The claimant was arrested on a warrant issued by the court understood for failing to appear for a scheduled court appearance. On the day the claimant was scheduled to go to court, he went. He showed paperwork to a clerk and understood that he did not have court that day. The claimant did not know he had an arrest warrant for failing to attend a scheduled court appearance.

The claimant was unable to work on Saturday or Monday when he was in jail. The claimant understood his wife called the employer on Monday, January 18, to let the employer know he was in jail. The claimant was released from jail on Monday and reported to work on January 19. After the claimant finished working on January 19, he discovered his locker had been cleaned out. He then learned the employer discharged him because he had been in jail and unable to work. The employer does not excuse absences because an employee is in jail.

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.

Even though the employer asserted the claimant missed three days of work without calling or reporting to work, the employer did not know if the claimant worked the day he was discharged. The claimant's testimony that he missed two days of work because he was in jail is credible and is given more weight than the employer's reliance on hearsay information. Even if the claimant did not work three days, he had no intention of quitting.

In this case, the employer discharged the claimant. 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).

Since the evidence does not establish that the claimant had any attendance issues before January 16, 2010, the employer ended the claimant's employment because he was in jail two or three days that he was scheduled to work. The claimant was in jail because court personnel gave him incorrect information. The claimant did not know he had done anything wrong or that there was a warrant for his arrest. The employer discharged the claimant for business reasons, but the claimant did not intentionally disregard the employer's interests. He did not commit work-connected misconduct. Therefore, as of August 22, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's September 29, 2010 determination (reference 03) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for business reasons. The claimant did not commit work-connected misconduct. As of August 22, 2010, 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 him.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css