

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN T NICODEMUS
Claimant

APPEAL NO: 09O-UI-06384-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 01/18/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

John T. Nicodemus (claimant) appealed a representative's February 13, 2009 decision (reference 01) that concluded he was not qualified to receive benefits because he had voluntarily quit his employment with Swift & Company (employer) for reasons that do not qualify him to receive benefits. A hearing was held before another administrative law judge on March 12, 2009. Based on the evidence presented during that hearing, the administrative law judge issued a decision affirming the decision. The claimant appealed to the Employment Appeal Board.

The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing, because the record of the hearing could not be transcribed. Another hearing was held on June 11, 2009. The Appeals Section arranged for an interpreter to participate in the hearing, so the claimant's testimony could be easily understood. The interpreter was not available for the hearing. The interpreter did not contact the administrative law judge until the hearing had been closed and the parties had been excused.

The claimant participated in the hearing. Tony Luse appeared on the employer's behalf. 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 claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work?

FINDINGS OF FACT:

The claimant started working for the employer on August 20, 2007. The claimant worked full time as a quality assurance inspector. Before the claimant worked in the quality assurance department, he worked as a translator for the employer. The claimant understood the employer considered an employee to have voluntarily resigned if the employee did not call or report to work for three consecutive days.

The claimant worked as scheduled until January 4, 2009. On January 5, the claimant's wife became ill and he took her to the hospital. The claimant contacted the employer before his shift started that day. The claimant talked to Brenda and reported he was unable to work on January 5 because his wife was ill and at the hospital. The claimant indicated he had a doctor's statement to verify he needed to stay with his wife on January 5.

On January 6, the claimant went to the employer's facility. He gave Aaron the doctor's statement that excused him from working the day before. The claimant asked if he could have the next four days off from work so he could take care of his wife and baby. The claimant understood Aaron gave him a leave of absence for four days and Aaron would take care of this for him. As a result of receiving a four-day leave of absence, the claimant did not call the employer to report he would not be at work the next few days.

On January 9, the claimant went to work. The security guard would not let the claimant into the plant. The security guard told the claimant that management gave instructions the claimant was not allowed into the plant. The claimant attempted to contact management or someone in the human resource department to find out why he was not allowed in to work. The claimant was not successful in talking to anyone.

The employer's records indicated the claimant had not called for three consecutive work days. In accordance with the employer's policy, the employer concluded the claimant had resigned. The employer no longer considered the claimant an employee as of January 7, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. When the claimant talked to Aaron on January 6 and then reported to work on January 9, these actions show that he had no intention of quitting his employment. The employer initiated the employment separation and 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).

The facts indicate the employer did not know the claimant had talked to Brenda on January 5 and went to the plant on January 6. The employer also did not know the claimant understood

he had received permission to take time off until January 9. Since the claimant received authorization for time off, he did not believe the employer required him to call and report that he would not be at work.

The facts establish the employer had business reasons for discharging the claimant, but the claimant did not commit work-connected misconduct. As of January 18, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's February 13, 2009 decision (reference 01) is reversed. The claimant did not quit his employment. Instead, the employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 18, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs