

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR VENEGAS SANCHEZ
Claimant

APPEAL NO. 11A-UI-12782-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GLOBAL FOODS PROCESSING INC
Employer

**OC: 09/04/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 26, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Sarah Kleber, attorney at law, appeared on the employer's behalf. David Guest, an owner, appeared on the employer's behalf. Ike Rocha interpreted the proceedings. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in July 2005. The claimant worked as a full-time utility employee. The claimant requested vacation August 21 through September 6, 2011. The employer granted this vacation request and expected the claimant to return to work on September 6 for his 6 a.m. shift. The employer's policy informs employees that if an employee does not return to work on the scheduled day after a vacation, the employer considers the employee to have voluntary quit.

The claimant's mother bought him a plane ticket to go to Mexico for his vacation. When the claimant went to the airport on September 5 and discovered his mother only bought him a one-way ticket, he could not buy a ticket to fly back to Des Moines until September 6. The claimant called and timely notified the employer on September 6 that he was unable to work. The claimant reported he had missed his plane.

The claimant left Mexico on September 6. On September 7, he was in Iowa, but was ill. He timely notified the employer he was unable to work on September 7 because he was ill. The claimant went to a doctor on September 7 and obtained a doctor's statement verifying he was unable to work that day.

On September 8, the claimant went to work. The claimant brought the doctor's statement for September 7. The employer had ended the claimant's employment on September 6 when he did not report back to work as scheduled from a scheduled vacation. The employer told the claimant that he could be rehired if he brought the employer documentation about his plane ticket. The claimant did not bring the employer this documentation because he had already been discharged.

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. Although the employer considered the claimant to have voluntarily quit, the facts do not support this conclusion. The claimant did not report to work on September 6, but he did not intend to quit. The employer initiated the employment on September 6 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 evidence establishes the claimant knew he was scheduled to return to work on September 6. The evidence does not establish that the claimant's job was in jeopardy prior to September 6. The claimant used poor judgment when he did not make sure he had a reserved flight to fly from Mexico back to Iowa on September 5. The facts do not establish the claimant intentionally failed to return to work as scheduled on September 6.

The employer established justifiable business reasons for discharging the claimant on September 6. The employer followed the employer's policy when ending the claimant's employment on September 6. The claimant did not intentionally disregard the employer's interests. He properly notified the employer he was unable to work on September 6. The claimant did not commit work-connected misconduct when he failed to report to work on September 6. While the claimant should have provided the employer with the requested documentation after September 6, the employer had already discharged him. If the claimant had provided the requested information, the employer may or may not have rehired him. As of September 4, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's September 26, 2011 determination (reference 01) is affirmed. The claimant did not voluntarily quit his employment. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of September 4, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw