

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MIAN Y TONG**

Claimant

**APPEAL NO. 09A-UI-06188-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**

Employer

**Original Claim: 03/22/09  
Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Swift & Company filed an appeal from a representative's decision dated April 8, 2009, reference 01, which held that no disqualification would be imposed regarding Mian Tong's separation from employment. After due notice was issued, a hearing was held by telephone on May 18, 2009. The employer participated by Aaron Vawter, Human Resources Coordinator. Mr. Tong did not respond to the hearing notice until after the hearing record was closed. The Appeals Bureau has no record of him calling prior to the hearing to provide a telephone number where he could be reached for the hearing. There is no record of anyone calling on his behalf to provide a telephone number for the hearing. Because he did not follow the instructions for participating as noted on the hearing notice, the administrative law judge declined to reopen the record.

**ISSUE:**

At issue in this matter is whether Mr. Tong was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Tong began working for Swift on June 2, 2008 and worked full time in production. Because a number of people called in absent on March 20, he was asked to work in a different job that day. He would have been working in the barn moving hogs rather than performing his usual job but would have been in his usual department. Mr. Tong refused to work in the barn because of the smell. He had performed the job of moving hogs earlier in his employment.

Based on Mr. Tong's refusal, management and human resources met with him and told him he had to perform the task assigned. He was told that a refusal would be considered a voluntary quit. He still refused and did not report to the work site as instructed. He left and turned his equipment in a few days later. Mr. Tong's job was not in jeopardy prior to the work refusal.

Mr. Tong filed a claim for job insurance benefits effective March 22, 2009. He has received a total of \$2,373.00 in benefits since filing the claim.

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

The administrative law judge concludes that the employer initiated the separation in this matter when Mr. Tong was not allowed to continue working after March 20, 2009. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Tong was discharged for insubordination.

Mr. Tong was given a reasonable directive on March 20. He was being reassigned to different work only for that day. The reassignment was due to business necessity because of the number of individuals who were absent from work that day. Mr. Tong was not being asked to perform work he had not done in the past. The work was also in the same department in which he usually worked. There was no policy or provision in the collective bargaining agreement that prohibited the employer from making a temporary reassignment.

The refusal to perform an assigned task does not constitute misconduct if the refusal is in good faith or for good cause. Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982). Mr. Tong's only reason for refusing to move hogs was that he did not like the smell in the barn. The administrative law judge does not doubt that the smell in the hog barn was offensive. However, Mr. Tong knew or should have known that working in a slaughterhouse might involve working around offensive odors. It is concluded that his dislike for the smell in the barn did not constitute good cause for refusing assigned work, especially given the temporary nature of the reassignment. The evidence failed to establish that the refusal was based on good-faith by Mr. Tong.

Mr. Tong knew that he would lose his employment if he refused to move hogs as instructed. Given the fact that the employer was short-handed on March 20, his refusal constituted a substantial disregard of the employer's standards and interests. It is concluded, therefore, that disqualifying misconduct has been established and benefits are denied.

Mr. Tong has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

**DECISION:**

The representative's decision dated April 8, 2009, reference 01, is hereby reversed. Mr. Tong was discharged for disqualifying misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Tong will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw