

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HARRIS J GBOMINA**

Claimant

**APPEAL NO: 11A-UI-16305-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 11/20/11**

**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's December 13, 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 nondisqualifying reasons. The claimant participated in the hearing. Aureliana Diaz, the human resource manager, 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 reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in April 2009. He worked full time. Even though the claimant does not read or understand English, he understood that if an employee needed to leave work early he should talk to a supervisor before leaving work. Before November 19, the claimant did not have any attendance problems and his job was not in jeopardy.

The claimant was working on Saturday, November 19, when he became sick at work. The claimant felt he had to go home. The claimant did not see a supervisor or go to the human resource office to report he was ill and had to leave work early. The claimant left work and drove himself to a doctor. The doctor gave him medication that made him sleep. The doctor told the claimant he could work as scheduled on Monday, November 21.

When the claimant got home, he did not call the employer. He went to bed and slept. When the claimant reported to work on November 21, his supervisor had reported that he walked off the job on Saturday. The claimant had not talked to anyone in management to let them know he left work early. Although the claimant told the employer he had gone to the doctor, the employer told the claimant he no longer had a job because the employer's policy considers employees to have voluntarily quit employment when they leave work early without permission.

## 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. The facts do not establish the claimant intended to voluntarily quit his employment when he left work early on November 19, 2011. On November 21, the claimant reported to work as scheduled. The employer initiated his employment separation and discharged him.

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).

Based on the employer's policy, the employer established justifiable business reasons for ending the claimant's employment. The claimant asserted he did not see anyone in management before he left work on November 19. The claimant's testimony that he went to a doctor after he left work is credible. Since the claimant did not have any attendance issues before November 19, his testimony that he left work because he was ill is credible. The claimant used poor judgment when he failed to talk to someone in management before he left work, have his doctor fax a statement to the employer to verify that the claimant had seen a doctor and did not contact the employer either at the doctor's office or after he got home to let the employer know he had left work early and why. Based on the claimant's attendance record, his poor judgment and that he was ill, he did not commit work-connected misconduct on November 19, 2011. As of November 20, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's December 13, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of November 20, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs