

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTIN RODRIGUEZ
Claimant

APPEAL NO. 08A-UI-07697-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**OC: 07/27/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 18, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 9, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with interpreter, Celia Huante. Tony Luse participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from October 15, 2007, to April 25, 2008. The claimant was off work for medical reasons with doctor's excusing him from working.

On April 30, 2008, the claimant has an appointment with his doctor. His doctor released him to return to regular duty on May 16, 2008. The employer received this release and expected him to be back at work on May 16, 2008. The claimant, however, saw his doctor again on May 9, 2008. His doctor certified that he would not be able to report to work until he was reevaluated. For some reason, the employer did not receive this doctor's statement.

When the claimant did not report to work or call in on May 16, 19, 20, and 21, the employer considered him to have voluntarily quit employment under its work rule that provides that an employee who is absent from work without notice to the employer for three days is deemed to have quit.

On July 7, 2008, the claimant was released to return to his regular duties effective July 14, 2008. He reported to the plant with his doctor's release but was informed that his employment had been terminated.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

No willful and substantial misconduct has been proven in this case. The claimant was absent from work due to legitimate medical reasons with a doctor's excuse. When he recovered from his medical problems, he reported to work but was informed that his employment was terminated. Even if the claimant's separation is treated as a voluntarily quit, he would be eligible under Iowa Code § 96.5-1-d since he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available.

DECISION:

The unemployment insurance decision dated August 18, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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