

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARTURO LEDESMA
Claimant

APPEAL NO: 08A-UI-09284-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & CO
Employer

OC: 09/14/08 R: 01
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Arturo Ledesma (claimant) appealed a representative's October 7, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of John Morrell & Company (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 28, 2008. The claimant participated in the hearing with his attorney, Dennis McElwain. Prior to the hearing, the employer notified the Appeals Section the employer decided no one on the employer's behalf would participate in the hearing. Based on the evidence, the arguments of the claimant, 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 for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 1999. The claimant worked as a full-time employee. Prior to September 6, 2008, the claimant's job was not in jeopardy.

The claimant worked as scheduled on September 6, 2008. From September 7 through 13, the claimant did not work on days he was scheduled because he had been arrested on September 7 and was in jail. The claimant had no way of contacting the employer to let the employer know he was unable to work these days.

On Monday, September 15, the claimant called and talked to the employer. The employer then told the claimant he no longer had a job because he had not called or reported to work September 7 through 13.

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 has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The facts do not establish that the claimant voluntarily quit his employment. Instead, the employer terminated the employment relationship.

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).

Without the employer participating in the hearing, it is speculative to conclude the employer ended the claimant's employment for a specific reason or reasons. As a result, the evidence presented during the October 28 hearing does not establish that the claimant committed work-connected misconduct. Therefore, the claimant is qualified to receive benefits as of September 14, 2008.

DECISION:

The representative's October 7, 2008 decision (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for business reasons. The employer did not establish that the claimant committed work-connected misconduct. As of September 14, 2008, 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