

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH DWEH

Claimant

APPEAL NO. 09A-UI-03715-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY

Employer

OC: 02/08/09

Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ruth Dweh filed an appeal from a representative's decision dated March 5, 2009, reference 01, which denied benefits based on her separation from Swift & Company. After due notice was issued, a hearing was held on April 15, 2009 in Des Moines, Iowa. Ms. Dweh participated personally and was represented by Laura Jontz, Attorney at Law. The employer participated by Tony Luse, Employment Manager. Laura Solo participated as the interpreter.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Dweh was employed by Swift from April 7, 2008 until January 6, 2009 as a full-time production worker. She was discharged after receiving a series of warnings.

Ms. Dweh received verbal warnings on June 18 and July 31, 2008 due to tardiness. She received a written warning on August 8 for returning from break late. She received a verbal warning on August 14 because she was talking to coworkers rather than focusing on her job. Ms. Dweh was suspended from work for one day on October 8 because she refused to pipe "chits" and did not have on the proper equipment. She received a final written warning on December 15 for leaving the production line without permission.

The decision to discharge was based on Ms. Dweh's conduct of January 6, 2009. Her supervisor reported that she was playing games by requesting to go to the bathroom and then deciding she would not go. She did request to go to the bathroom. By the time permission was granted, it was close to break time. She then told the supervisor that she would wait and go during her break. The supervisor also reported that Ms. Dweh spent time just standing around during the shift on January 6. She was discharged the same day.

REASONING AND CONCLUSIONS OF LAW:

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). The employer's burden included establishing that the conduct which prompted the discharge constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). In the case at hand, the employer discharged Ms. Dweh due to her conduct of January 6, 2009.

The supervisor reported that Ms. Dweh made multiple requests to use the bathroom on January 6 but would not go when permission was granted. The administrative law judge is not inclined to believe she refused to go on multiple occasions. She had received warnings for not returning from break on time and for visiting with coworkers rather than working. If she was one who spent time not performing her job, it seems unlikely she would pass on opportunities to leave the line to go to the bathroom. Ms. Dweh acknowledged that she did decline an opportunity to go to the bathroom but only because it was close to break time.

The employer did not present testimony from any individual who witnessed Ms. Dweh's conduct on January 6. The evidence as a whole failed to establish that she engaged in misconduct on that date. The next most prior disciplinary action was on December 15. Conduct that occurred on December 15 would not represent a current act in relation to the January 6 discharge date. Inasmuch as the employer has failed to establish a current act of misconduct, no disqualification is imposed.

DECISION:

The representative's decision dated March 5, 2009, reference 01, is hereby reversed. Ms. Dweh was discharged by Swift but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs