

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MCPETER C WAYLEE
Claimant

APPEAL NO. 09A-UI-08448-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 04/26/09
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Swift & Company filed an appeal from a representative's decision dated June 3, 2009, reference 01, which held that no disqualification would be imposed regarding McPeter Waylee's separation from employment. After due notice was issued, a hearing was held by telephone on June 30, 2009. Mr. Waylee participated personally. The employer participated by Aaron Vawter, Human Resources Coordinator.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Waylee was employed by Swift from January 27 until April 24, 2009 as a full-time production worker. The decision to discharge him was prompted by the fact that he was late reporting to his line on April 24. He clocked in on time but went to health services before reporting to his line. He had received a warning on February 18 when he returned to work late following a break.

Mr. Waylee was also discharged because of his job performance. He received a warning on February 20 because he was not marking snouts appropriately. He received another warning on March 5 because he was not pulling his fair share of snouts.

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 final act that prompted the discharge constituted misconduct within the meaning of the law. 871 IAC 24.32(8). Mr. Waylee does not dispute that he was late reporting to his line on April 24.

However, he was late only because he was seen in health services before reporting to his work station. It is concluded, therefore, that there was no act of misconduct on April 24.

The next most prior disciplinary action against Mr. Waylee was on March 5, 2009. Conduct that occurred on March 5 would not represent a current act in relation to the April 24 discharge date. For the reasons cited herein, it is concluded that there was no current act of misconduct. Therefore, benefits are allowed.

DECISION:

The representative's decision dated June 3, 2009, reference 01, is hereby affirmed. Mr. Waylee was discharged by Swift, but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw