

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

VICTOR H FELIX
1703 EDGEBROOK DR APT B4
MARSHALLTOWN IA 50158

SWIFT AND COMPANY
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 05A-UI-08324-AT
OC: 06-26-05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Victor H. Felix, filed an appeal from an unemployment insurance decision dated July 28, 2005, reference 01, which disqualified him for benefits. After due notice was issued, a telephone hearing was held August 29, 2005 with Mr. Felix participating. Exhibit A was admitted into evidence on his behalf. Assistant Human Resources Manager Chris Lamb participated for the employer, Swift and Company. Rosa Maria Paramo-Ricoy served as interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Victor H. Felix was employed by Swift and Company from October 15, 2002 until he was discharged June 23, 2005. On the date of separation

Mr. Felix was scheduled to see a company doctor because of a job-related medical condition. Mr. Felix knew of the appointment. He did not go to the appointment because he had a flat tire. He did not notify the company or the doctor. He was discharged when he returned to work.

At the time Mr. Felix was at the final disciplinary step because of poor attendance. Most of his attendance points had come from absences due to medical conditions properly reported to the employer. However, he had been tardy on February 4, 2005 and on October 19, 2004.

When Mr. Felix filed his original claim for benefits in June of 2005 he lived at 207 South Second Street, Marshalltown, Iowa. That was the address used when the agency mailed out a fact-finding decision on July 28, 2005. By that time, Mr. Felix had moved to apartment B4, 1703 Edgebrook Drive, Marshalltown. He did not receive the adverse decision. He first learned of it on or about August 15, 2005, the date that he filed his appeal.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He concludes that he does. The evidence in the record persuades the administrative law judge that Mr. Felix did not know of the adverse decision until after August 8, 2005, the last day for filing his appeal. Since he filed his appeal within a reasonable amount of time after actually learning of the adverse decision, the administrative law judge concludes that the appeal can be accepted as timely.

The remaining question is whether the evidence establishes that Mr. Felix was discharged for misconduct in connection with his work. It does.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to medical conditions properly reported to the employer cannot be held against an employee for unemployment insurance purposes. See 871 IAC 24.32(7).

The administrative law judge concludes that the final absence was unexcused. Mr. Felix was assigned the task of seeing the company doctor. He did not see the doctor because of a flat tire, a matter of personal responsibility. Furthermore, he did not advise the employer or the doctor of the situation. This absence when viewed in the context of the two instances of tardiness and the intervening discipline is sufficient to establish excessive unexcused absenteeism. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated July 28, 2005, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

dsb/pjs