

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKI L MILLER
Claimant

APPEAL NO. 08A-UI-11626-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 11/16/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jacki Miller (claimant) appealed a representative's December 9, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 30, 2008. The claimant participated personally. The employer participated by Tony Luse, Employment Manager. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 30, 2006, as a full-time quality assurance technician. The claimant signed for receipt of the employer's handbook on November 21, 2006. The handbook states that a person who is absent without notice for three days will be considered to have voluntarily quit. In orientation the claimant was told to properly report absences to the Human Resources Office. The employer issued the claimant a name badge. On the back of the name badge was listed a number to call for absences.

The claimant worked on the hot side for most of her employment. The hot side had four employees. The supervisor asked employees to report absences to the Quality Assurance Lab. The claimant always did so and was never reprimanded. In October 2008, the claimant was transferred to the cold side. This side had 20 employees and reported to a different supervisor. This supervisor did not indicate how employees should report absences. The claimant thought she should report absences in the same manner she did on the hot side.

The handbook indicates that employees must request a vacation day one week in advance by completing a form and giving it to the supervisor. The claimant verbally requested vacation from

the supervisor and was told her request was denied because too many employees requested the same days. On or about October 31, 2008, the claimant verbally requested November 7, 2008, as a vacation day. The supervisor told the claimant he would let her know.

On November 5 and 6, 2008, the claimant telephoned the Quality Assurance Lab and said she would not be at work because her nine-year-old daughter was ill. A female took the message. The claimant assumed she could take November 7, 2008, as a vacation day because her supervisor did not get back to her. On October 10, 2008, the employer telephoned the claimant and told her she was terminated. The employer had issued the claimant no warnings during her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of

job-related misconduct. While the claimant did not report her absences according to the handbook, she did report her absences according to the requests of the supervisor. The employer's supervisor requested reporting outside the bounds of the handbook. In addition, the employer's supervisor told the claimant he would inform the claimant about her request for vacation. The supervisor never told the claimant that her request was invalid or her request was denied. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

There was no evidence offered indicating the claimant was not able and available for work. The claimant is able and available for work. She is eligible to receive unemployment insurance benefits so long as she remains qualified.

DECISION:

The representative's December 9, 2008 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed. The claimant is able and available for work. She is eligible to receive unemployment insurance benefits so long as she remains qualified.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css