

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY P SHOGREN
Claimant

APPEAL NO. 07A-UI-09850-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 09/23/07 R: 02
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rodney Shogren filed an appeal from a representative's decision dated October 23, 2007, reference 01, which denied benefits based on his separation from Swift & Company. After due notice was issued, a hearing was held by telephone on November 6, 2007. Mr. Shogren participated personally. The employer opted not to participate.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Shogren was employed by Swift from October 31, 2006 until September 25, 2007. He was employed full time in production. He overstayed his 15-minute break by five minutes on September 24 because he was sleeping. The coworker who was to awaken him neglected to do so. As a result of the incident, Mr. Shogren was discharged on September 25, 2007. He was not given any other reason for the discharge.

Mr. Shogren subsequently returned to full-time employment with Swift on November 1, 2007. His reinstatement was the result of a grievance filed concerning his separation.

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). Mr. Shogren was discharged after he overstayed his break because he was sleeping. This is not a case in which he was sleeping on the production floor. Nor is it a case where he had hidden himself away for the purpose of sleeping. He went to sleep during his break and neglected to wake up in time to return from break timely.

Mr. Shogren did not have a history of sleeping on the job and was given no other reason for the discharge. Given the circumstances under which he was sleeping and given that there were no prior incidents of the same conduct, the administrative law judge is inclined to characterize the incident of September 24 as an isolated instance of negligence rather than deliberate misconduct. The employer has failed to satisfy its burden of proving that Mr. Shogren should be disqualified from receiving benefits. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated October 23, 2007, reference 01, is hereby reversed. Mr. Shogren was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css