

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRY L CHANDLER**  
Claimant

**APPEAL NO. 08A-UI-11422-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 11/02/08 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Sherry Chandler (claimant) appealed a representative's November 26, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Swift & Company (employer) for excessive unexcused absenteeism after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 18, 2008. The claimant participated personally. The employer participated by Tony Luse, Employment Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**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 October 3, 2005, as a full-time production worker. At the end of her employment she was working from 6:30 a.m. to 3:00 p.m. The claimant signed for receipt of the employer's handbook on October 3, 2005 and October 3, 2006. The handbook indicates that an employee may be terminated if she accrues three unexcused absences. The employer issued the claimant written warnings on August 13 and September 26, 2008. With her final warning the claimant understood she had accrued two unexcused absences. The employer notified the claimant that further infractions could result in termination from employment.

On October 20, 2008, the claimant asked her supervisor if she could leave work early to take care of personal issues. The supervisor granted the claimant's request. The claimant then asked if she could take vacation days on October 21, 22 and 23, 2008, for personal matters. The supervisor said that the office would have to approve the claimant's leave. The claimant left work on October 20, 2008, without finding out whether she could have any vacation days. She did not contact the employer on October 21, 2008. On October 22 and 23, 2008, she left a message on the employer's message system but did not call the office. Later on October 23, 2008, the claimant telephoned the office. She was told to come to the office on October 24,

2008. The claimant arrived at the office between 9:00 a.m. and noon. The employer terminated the claimant for accruing at least three unexcused absences.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was 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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The representative's November 26, 2008 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been

paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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