

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAN VEN
Claimant

APPEAL NO: 09A-UI-05144-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 02/08/09
Claimant: Appellant (5)

Section 9 6.5-2-a – Discharge

STATEMENT OF THE CASE:

Chan Ven (claimant) appealed a representative's March 26, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Swift & Company (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 29, 2009. The claimant participated in the hearing. Tony Luse, the employee relations manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 13, 2008. The claimant worked full time. The claimant was one of several employees who drove from Des Moines to Marshalltown for work. The claimant did not know anyone else from Des Moines.

The claimant worked as scheduled on June 19, 2008. He did not report to work on June 20 because his car broke down and he did not have any transportation to work. The claimant called the employer, but did not leave a message. The claimant did not understand he could leave a message on the employer's answering machine that the employer could listen to later. The claimant did not call or report to work the week of June 23. The claimant did not get his car working again until June 26.

When the claimant did not call or report for three consecutive days, in accordance with the employer's policy, the employer considered the claimant to have abandoned his employment. The employer no longer considered the claimant as of June 24, 2008. The claimant went to

work on June 26 and went to the office for his timecard. He was then told to clean out his locker and turn in his equipment.

The claimant worked for DES Staffing from late September through early November 2008. The claimant earned wages totaling \$2,460.00 from DES Staffing.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts indicate the claimant did not intend to quit his employment. Instead, he did not report to work June 20 through 25 because he did not have transportation to Marshalltown. Although the claimant called the employer the morning of June 20, he did not leave a message on the answering machine. When the claimant did not leave a message, the employer did not know why he had not reported to work and could not contact him to give him names of other employees from Des Moines he could ride to work with. In this case, the employer initiated the claimant's employment as of June 24, 2008.

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). Since the claimant did not call or report to work for four consecutive days, the evidence established the claimant had excessive unexcused absenteeism. This is especially true when the employer's policy informs employees they are considered to have abandoned their employment when they do not call or report to work for three consecutive days. Based on the facts in this case, the employer established that the claimant committed work-connected misconduct. Therefore, as of June 22, 2008, the claimant is not qualified to receive benefits.

The evidence does not establish the claimant has earned ten times his weekly benefit amount of \$2,880.00 from June 22, 2008, through February 9, 2009. If the claimant has earned this amount, he needs to provide proof of these wages to his local Workforce office.

DECISION:

The representative's March 26, 2009 decision (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for excessive unexcused absenteeism or work-connected misconduct.

The claimant is disqualified from receiving unemployment insurance benefits as of June 22, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css