

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA C LOGSDON**  
Claimant

**APPEAL NO. 09A-UI-04070-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**Original Claim: 02/08/09  
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 3, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 9, 2009. The parties were properly notified about the hearing. The claimant called in and provided a telephone number to call for the hearing, but was not available at the time of the hearing. Tony Luse participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked as a production worker for the employer from January 2, 2008, to February 7, 2009. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge if they received ten attendance points for unscheduled absences or tardiness in a 12-month period. The claimant had reached ten points and was placed on a final 90-day contract on July 9, 2008, that subjected her to discharge if she were late or absent. She was also informed that if she reached 10 points again, she would be discharged.

The claimant had the day off on January 29, 2009, for her birthday but was scheduled to work on January 30, 2009. She was absent from work on January 30 without notifying the employer. She was required to report to the office on February 2 but she continued working a few days after that. She was discharged on February 7, 2009, for violating the employer's attendance policy.

The claimant filed for and received a total of \$2,027.00 in unemployment insurance benefits for the weeks between February 8 and April 4, 2009.

## **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

## **DECISION:**

The unemployment insurance decision dated March 3, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/kjw