

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEX V GLAY
Claimant

APPEAL NO. 09A-UI-04958-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 02/15/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Swift & Company filed an appeal from a representative's decision dated March 17, 2009, reference 01, which held that no disqualification would be imposed regarding Alex Glay's separation from employment. After due notice was issued, a hearing was held by telephone on April 20, 2009. Mr. Glay participated personally. The employer participated by Tony Luse, Employment Manager.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Glay was employed by Swift from March 31, 2008 until February 16, 2009. He worked full time in production. He was discharged because of his attendance.

Mr. Glay was absent due to transportation issues on June 16 and August 19, 2008. He was absent but did not call to report the absence on December 26, 2008. He had received warnings about his attendance on October 8, November 4, and December 23. As a result of the December 26 absence, he was placed on probation for 90 days. He was told that any further attendance issues during the probationary period could result in his discharge. Mr. Glay was absent for unknown reasons on February 3.

Mr. Glay left work early on February 11 after being seen in health services. He was then absent on February 12 and 13 but did not call on either date to report that he would be absent. As a result, he was discharged when he returned to work on February 16, 2009. Attendance was the sole reason for his discharge.

Mr. Glay filed a claim for job insurance benefits effective February 15, 2009. He has received a total of \$3,272.00 in benefits since filing the claim.

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. An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and it must be properly reported. 871 IAC 24.32(7).

Mr. Glay was on probation as of December 29, 2008 because of his attendance. He was clearly on notice that further infractions could result in losing his job with Swift. In spite of the probation, he accumulated unreported absences on February 12 and 13. The evidence of record does not establish any good cause for the failure to give notice of the intended absences and as such, both are unexcused. Two consecutive unexcused absences during probation are sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. For the above reasons, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

Mr. Glay has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Glay will be required to repay benefits already received.

DECISION:

The representative's decision dated March 17, 2009, reference 01, is hereby reversed. Mr. Glay was discharged for misconduct in connection with his employment. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Glay will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs