

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN N MAIEK**  
Claimant

**APPEAL NO. 10A-UI-02827-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**Original Claim: 12/20/09  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated February 16 2010, reference 01, that held he was discharged for misconduct on December 11, 2009, and that denied benefits. A telephone hearing was held on April 7, 2010. The claimant participated. Tony Luse, Employment Manager, participated for the employer. Employer Exhibits 1 through 3 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant began work on March 23, 2009, and last worked for the employer as a full-time production worker on the cut floor on December 10, 2009. The claimant received the attendance policy that three unexcused absences may result in termination. Claimant received progressive discipline from a written warning on May 12, and June 17 for unexcused absences, to a final incident on December 10, 2009, for missing work due to being in jail.

The employer provided documentation to support that the claimant either failed to report or provided inexcusable reasons for missing work, which included his arrest arising for an auto accident on December 10. The claimant made a late report and missed work for an inexcusable reason, and was discharged on December 11 for excessive unexcused absences. The union grieved the claimant's discharge, which was denied by the employer.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on December 11, 2009, for excessive unexcused absenteeism.

The employer warned the claimant about his unexcused absences that led to the final incident of him failing to timely report and missing work due to his arrest on December 10. The absenteeism policy violation/warnings, in light of the recent incident, does constitute job disqualifying misconduct.

**DECISION:**

The department decision dated February 16, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on December 11, 2009. Benefits are denied until the claimant re-qualifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw