

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARRY B EVANS
Claimant

APPEAL NO. 08A-UI-08645-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 08/24/08 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Barry B. Evans (claimant) appealed a representative's September 17, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2008. The claimant participated in the hearing. Aaron Vawter 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 17, 2007. He worked full time as a production worker in the employer's Marshalltown, Iowa meat processing facility. His normal schedule was Monday through Friday, 4:00 p.m. to 12:00 a.m., plus some Saturday overtime. His last day of work was July 31, 2008. The employer discharged him on August 4, 2008. The reason asserted for the discharge was excessive absenteeism.

Since beginning his employment through June 23 the claimant had a number of absences, many of which were treated as excused, but three of which were treated as unexcused: January 18, 2008, due to transportation issues, June 23, 2008, a no-call/no-show for Saturday overtime, and June 23, 2008, due to personal business. As a result of these three unexcused absences, the employer presented the claimant with a last-chance agreement. While the claimant disagreed and asserted that he had not been given proper notice of the Saturday overtime scheduled for June 21, he did not pursue that argument at the time and signed the last-chance agreement. The agreement specified that he could have no unexcused occurrences between June 24 and September 24 or he would be discharged.

On July 31 the claimant's car had died in the employer's parking lot after the claimant got back to work. At approximately 9:15 p.m. he spoke with Mr. Vawter, a human resources coordinator, and explained his car problem, indicating that he needed his paycheck, which normally would have been given to him on August 1, in order to take care of his car. Mr. Vawter agreed to give the claimant his check that night rather than waiting until the next day, and agreed that the claimant could then leave to take care of his car.

When the claimant got his paycheck, he went to a local retailer and attempted to cash the check; however, since the check was dated for August 1, the retailer would not cash the check at that time. The claimant then made other arrangements to get a ride back to his home and to have his car towed.

On August 1 the claimant cashed his check and then tried to fix his car. However, he discovered the work was beyond what he could then do. He did call in the employer before his shift that day to report he would be absent due to his car problems. While the employer had excused the claimant's leaving early on July 31, although it acknowledged that the claimant had called in, the employer did not excuse the claimant's absence on August 1. As a result, the employer concluded that the claimant had violated his last-chance agreement, and he was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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 to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Absences due to issues that are of purely personal responsibility, specifically including transportation, are not excusable. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that

future absences could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's September 17, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 4, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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