

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABDEL KARIM LAAFAR
Claimant

APPEAL NO. 07A-UI-09132-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 08/26/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated September 18, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 10, 2007. The claimant participated. The employer participated by Tony Luse.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer or whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from March 28, 2007 until August 23, 2007 when he was discharged from employment. Mr. Laafar worked as a full-time laborer and was paid by the hour.

Mr. Laafar was discharged from his employment when the company thought that he had left work without authorization on August 22, 2007 at approximately 5:50 p.m. and did not return. On that date Mr. Laafar was ill and unable to continue working. The claimant visited the company nurse's office to be examined. When the claimant believed that the pain in his back and his heart area needed to be examined by a physician, he was told by the company nurse, "If you want to go to a hospital go...." The claimant had been unable to find his immediate supervisor and, therefore, followed the nurse's instructions and left work that evening. The claimant returned to work the following day and worked approximately two hours before being discharged. The claimant believed that he was following instructions of the company nurse and desires to be re-employed by the company.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant did not choose to voluntarily quit his employment but instead was discharged by the employer when the employer believed that the claimant had left work without authorization on August 22, 2007. The evidence in the record establishes that on that date Mr. Laafar was ill with pain in his back and heart area and went to the company nurse's office. When the claimant continued to complain of heart pain and wished to see a doctor, the claimant was instructed by the company nurse to leave and visit a hospital if the claimant deemed necessary. Although Mr. Laafar attempted to contact his immediate supervisor, he was unable to find his supervisor and thus, followed the nurse's direction and left work that evening. The claimant reported for work the following day and desired to continue his employment.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

For the reasons stated herein, the administrative law judge concludes that the evidence does not support a finding of intentional misconduct in connection with Mr. Laafar's employment. The claimant believed that he was following the instructions of the company nurse when he left the premises. The claimant desired to continue the employment relationship and returned to work the following day, working approximately two hours before being discharged. Intentional disqualifying misconduct has not been established.

DECISION:

The representative's decision dated September 18, 2007, reference 01, is hereby affirmed. The claimant was separated under non disqualifying conditions and is eligible to receive unemployment insurance benefits, providing that he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs