

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IGNATIUS S MCGILL
Claimant

APPEAL NO. 09A-UI-02889-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 01/18/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 13, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 19, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Tony Luse participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from July 14, 2008, to January 8, 2009. The claimant 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 after three unexcused absences. Unexcused absences are absences for reasons other than illness.

The claimant had an unexcused absence for missing work on August 21, 2008, when he called in stating he had personal business. He missed work on December 30, and 31, 2008, due to illness, and brought in a doctor's excuse. The claimant called in to report these absences, but the employer recorded that he had not called in on December 30.

On January 6, 2009, the claimant called in to say he was going to be late for work. He actually reported to work on time, and worked that day, but the employer recorded it as an unexcused absence due to tardiness. The claimant reported to work on January 9 and was required to sign in instead of punching in, because his card had been restricted due to the alleged attendance occurrence on January 6. He worked that day, but later that day was informed by the office that his employment was being terminated because he had three unexcused absences.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly that he called in and said he was going to be late on January 6 but actually reported on time and worked. He also testified credibly that he was not absent without notice on January 9. Tony Luse acknowledged that there could have been mistakes made regarding his absences. The employer has failed to meet its burden of showing the claimant was discharged for a current act of misconduct.

DECISION:

The unemployment insurance decision dated February 13, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw