

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDGAR F HERNANDEZ
Claimant

APPEAL NO. 09A-UI-17180-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 09/20/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 28, 2009, reference 03, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 22, 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 as a production worker for the employer from August 3, 2009, to September 17, 2009. The claimant was informed and understood that under the employer's work rules, new employees were on probation for 75 days and were subject to termination for any unexcused absences.

The claimant was absent due to his mother's medical problems on August 17. He was absent due to car problems on August 22. He was absent due to stomach problems from August 24 to 26 and due to having H1N1 flu from September 8 to 14. He was late for work on September 15.

The claimant does not have a valid driver's license. On September 19, the claimant was arrested and incarcerated for driving without a valid license. As result, he was absent from work. He had his mother notify the employer about his absence.

The employer discharged the claimant when he reported to work on September 21, 2009, because of his history of absenteeism during his probation. Under the employer's policy transportation problems and being in jail are considered 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 section 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 claimant's absences on August 22 and September 19 were unexcused and amounted to willful and material breaches of the duties and obligations to the employer and substantial disregarded the standards of behavior the employer had the right to expect of the claimant.

Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated October 28, 2009, reference 03, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs