

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORLINO T GATLUAK
Claimant

APPEAL NO. 08A-UI-04717-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 04/13/08 R: 02
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Swift & Company (Swift) filed an appeal from a representative's decision dated May 8, 2008, reference 01, which held that no disqualification would be imposed regarding Corlino Gatluak's separation from employment. After due notice was issued, a hearing was held by telephone on June 2, 2008. Mr. Gatluak participated personally. The employer participated by Tony Luse, Employment Manager.

ISSUE:

At issue in this matter is whether Mr. Gatluak was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gatluak was employed by Swift from June 18, 2007 until February 4, 2008 as a full-time production worker. He called on January 29 to report that he would be absent due to illness. He did not call on January 30, January 31, or February 1. Mr. Gatluak returned to work on February 4 with a doctor's excuse dated the same day. The excuse only indicated he could return to work but did not indicate dates for which he was under a doctor's care.

The employer has a written work rule, of which Mr. Gatluak was aware, which provides that three consecutive unreported absences will be considered a voluntary quit. Because of the consecutive unreported absences, Mr. Gatluak was notified on February 4 that he no longer had a job with Swift.

Mr. Gatluak filed a claim for job insurance benefits effective April 13, 2008. He has received a total of \$1,603.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Mr. Gatluak accumulated three consecutive unreported absences. Since he called timely to report the absence of January 29, there would seemingly be no reason he could not report the absences of January 30, January 31, and February 1. Although he returned to work with a doctor's note on February 4, the note did not indicate a treatment date or the dates he was excused from work. The fact remains that, even if the absences were due to illness, Mr. Gatluak failed to properly report them to the employer. He knew or should have known from the employer's written policy that three consecutive unreported absences could result in the loss of his employment, either as a discharge or a presumptive quit.

Because the absences identified above were not properly reported and the evidence failed to establish justification for the failure to report, all three are considered unexcused. The administrative law judge considers three consecutive unexcused absences to be excessive. It is concluded, therefore, that disqualifying misconduct has been established and benefits are denied. Mr. Gatluak has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated May 8, 2008, reference 01, is hereby reversed. Mr. Gatluak was discharged by Swift for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Gatluak has been overpaid \$1,603.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css