

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KARRY A KEENEY**  
Claimant

**APPEAL NO. 09A-UI-19159-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY / JBS**  
Employer

**Original Claim: 11/15/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Swift & Company / JBS (employer) appealed a representative's December 14, 2009 decision (reference 01) that concluded Karry A. Keeney (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 4, 2010. The claimant participated in the hearing. Tony Luse 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 November 10, 2008. She worked full-time as a first-shift production worker on the cut floor of the employer's Marshalltown, Iowa, pork processing facility. Her last day of work was November 16, 2009. The employer discharged her on that date. The reason asserted for the discharge was having received too many disciplinary actions.

The claimant had received a final written warning on October 1, 2009 for leaving the line early at break and at the end of the day, with which the claimant did not agree. She had previously received two written warnings, one verbal warning, and two informal counselings, most related to questions of her being at her location on the line.

On November 16 the claimant had not been feeling well and was faint, and so at about 11:30 a.m. she asked and received permission from her supervisor to go to health services. When she reported to health services and stated that she felt faint, the nurse had her sit in a cool area for about 15 minutes. After that time, the claimant indicated she felt better and would return to the line. As she was returning to her workstation, a coworker asked the claimant to fill her spot so that the coworker could go to the restroom. They attempted to find a supervisor to

approve the switch, but when no supervisor was available, the claimant filled in at the coworker's spot and the coworker went to use the restroom. When that coworker returned, another coworker also indicated she needed to use the restroom, and again no supervisor could be located to ask approval, so the claimant proceeded to fill in for that coworker and that coworker went to use the restroom. When that coworker returned, the claimant went back to her own workstation.

The claimant's supervisor approached her at about 12:30 p.m. and indicated he had been looking for her and had not been able to find her either in the health services office or on the line. He then took her to the office, where she was given the additional disciplinary action, which resulted in her discharge.

### **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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 that 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 that 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).

The reason cited by the employer for discharging the claimant is having too many disciplinary actions, with a final instance of being away from her workstation without approval. Under the circumstances of this case, the claimant's failure to immediately return to her workstation after leaving health services because of filling in for coworkers using the restroom was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good-faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's December 14, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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