

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA A CORSON**  
Claimant

**APPEAL NO. 09A-UI-01413-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 11/16/08 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 21, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 18, 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 January 17, 2007, to November 10, 2008. 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 would be considered to have quit employment after three days of unreported absence. The claimant had been placed on a 90-day contract on November 3 that indicated that he would be discharged for any additional absences. The majority of the days the claimant had missed were because his son was born premature and had medical issues.

The claimant's next scheduled date of work after November 10 was on November 11. The grandfather of the claimant's wife was ill in Florida and was not expected to live much longer. She wanted to see her grandfather before he died. The baby's doctors had cleared taking the trip to Florida as long as there was someone with him in the back seat of the car at all times. The claimant contacted the employer and asked for leave to go to Florida with his wife and child. The leave request was refused and the claimant was informed that if he left, he could bring back any documentation regarding the trip and the grandfather's medical condition, but he would likely be discharged. He was informed that he did not need to call in while he was gone.

The claimant left for Florida and returned on November 21, 2008. He immediately contacted the employer to see if he had a job, but was informed that he was terminated on November 14 due to three days of absence without notice to the employer.

## **REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The preponderance of the evidence establishes the employer discharged the claimant.

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).

871 IAC 24.32(7) provides excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer. The evidence establishes the claimant's absent was due to medical emergency regarding his wife's grandfather. He notified the employer and was denied the time off. He was told that he did not have to continue to call in. No willful and substantial misconduct has been proven in this case.

Even if the claimant is considered to have quit, he would be eligible for benefits under Iowa Code § 96.5-1-f, which provides that a claimant is not disqualified if he left employment for a period not to exceed ten working days for compelling personal reasons and prior to leaving had informed the employer of the compelling personal reasons, and immediately after such compelling personal reasons ceased to exist he returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available. Since the claimant left for ten days, notified the employer before he left, returned to work and no work was available, he is qualified to receive unemployment insurance benefits.

## **DECISION:**

The unemployment insurance decision dated January 21, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw