

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND L CHAVEZ-CORREA
Claimant

APPEAL NO. 09A-UI-07454-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 04/12/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated May 6, 2009, reference 01, that held he was discharged from work for leaving without the employer's permission on April 14, 2009, and benefits were denied.

A telephone hearing was scheduled for and held on June 2, 2009. The claimant participated. Tony Luse, employment manager, participated on behalf of the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

The claimant worked as a full-time production worker from November 8, 2006, to April 14, 2009. The claimant was advised during orientation class and he received an employee handbook that required him to clock out whenever he left the premises and to let his supervisor know, if it was prior to the end of a work shift.

The claimant left work without clocking out and notifying his supervisor on April 14, 2009, during his work break. The claimant went with another employee to go to his home in order to retrieve a glad lock to be used at work.

The claimant was confronted by his supervisor when he was not at his freezer line workstation. The claimant admitted that he failed to clock out when he left the premises and failed to let his supervisor know where he was going. The employer could have provided the claimant with a glad lock if he had requested it.

The claimant was discharged from employment for an unauthorized leaving of the premises on April 14, 2009.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was discharged for misconduct in connection with the employment for violation of the employer's policy regarding the unauthorized leaving of the premises without permission.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which 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. On the other hand 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.

The claimant admitted in the hearing that he failed to clock out and notify his supervisor that he was leaving the premises during his break period. The claimant knew it was against company policy or should have known that to leave the premises without clocking out and obtaining permission was a violation that could result in termination from employment. The claimant's explanation that this was an isolated incident in which he was trying to obtain a work tool during a break period does not excuse his intentional disregard of the company policy that is misconduct.

DECISION:

The department representative's decision dated May 6, 2009, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment for leaving work without permission, in violation of a company rule, on April 14, 2009. The claimant is not entitled to receive benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

R.L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw