

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORGE J RENDON
Claimant

APPEAL NO. 08A-UI-00092-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 12/02/07 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 filed an appeal from a representative's decision dated December 26, 2007, reference 01, which held that no disqualification would be imposed regarding Jorge Rendon's separation from employment. After due notice was issued, a hearing was held by telephone on January 22, 2008. Mr. Rendon participated personally and offered additional testimony from Stacy Lopez. The employer participated by Tony Luse, Employment Manager. Ike Rocha participated as the interpreter. The hearing record was left open to allow Mr. Rendon an opportunity to provide telephone and hospital records.

The hearing reconvened on February 28, 2008. The hospital records previously in Mr. Rendon's possession were no longer available to him. He had been unable to obtain the desired telephone records. He requested that the administrative law judge subpoena the telephone records as had been previously offered. The hearing record was again left open pending receipt of additional evidence. The telephone records were subpoenaed from I-Wireless and copies made available to both parties.

The hearing reconvened on March 19, 2008, with Mr. Rendon participating personally. He again offered additional testimony from Stacy Lopez. Tony Luse again participated for the employer. Ike Rocha participated as the interpreter. As of March 19, Mr. Rendon had not received the telephone records sent by the administrative law judge. Therefore, the records were not admitted as evidence. Employer's Exhibit One was admitted as evidence.

ISSUE:

At issue in this matter is whether Mr. Rendon 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. Rendon began working for Swift on April 2, 2007 as a full-time production worker. He was discharged because of his attendance.

Mr. Rendon was absent on September 29 but did not call the employer to report the absence. He was scheduled to be at work at 3:30 p.m. but did not wake up until approximately 9:00 p.m. As a result of the absence, he received a warning on October 2. His last day at work was November 30. On December 1, he began serving a sentence in the Tama County jail. Mr. Rendon's girlfriend called the employer on December 3 to report that he was in jail. Neither he nor anyone acting on his behalf contacted the employer on December 4 or December 5. Mr. Rendon was released from jail on December 6. He attempted to resume the employment after his release but his job was no longer available. He had been discharged due to excessive absences.

Mr. Rendon filed a claim for job insurance benefits effective December 2, 2007. He has received a total of \$6,390.00 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. Rendon was absent for three consecutive days, December 3 through 5, because he was in jail serving a sentence. He contended during the hearing that he was in Tennessee during this time frame. However, the administrative law judge finds the Tama County Sheriff's Office booking report to be more persuasive. The booking report indicates that he was booked on December 1 and released on December 6. The descriptive information on the booking form, including birth date, is consistent with information regarding Mr. Rendon. During the initial hearing in this matter, before introduction of the booking report, the employer testified that Mr. Rendon's friend called on December 3 and stated that he was in jail.

Absences due to purely personal matters, such as incarceration, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Rendon had been warned about his attendance after his unreported absence of September 29. His three consecutive unexcused absences beginning December 3 constituted a substantial disregard of the standards his employer had the right to expect. For the reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Rendon 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 December 26, 2007, reference 01, is hereby reversed. Mr. Rendon 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. Rendon has been overpaid \$6,390.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs