

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD SMITH
Claimant

APPEAL NO. 09A-UI-04970-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 03/01/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 27, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 28, 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 second-shift production worker from January 14, 2008, to March 4, 2009. 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 were subject to discharge after three unexcused absences or having ten attendance points for unscheduled absence or tardiness.

The claimant was placed on a 90-day attendance contract in September 2008 for his attendance. He successfully completed the 90-contract, but he was informed that if he reached the ten-point limit again, he would be terminated because employees are not given a second 90-day contract.

The claimant was absent with notice to the employer on January 16, 2009, because his girlfriend was sick. On March 5, the claimant was scheduled to work at 2:30 p.m. Sometime before noon, he drove to Oskaloosa. On his way back to Marshalltown, he got a flat tire. He called the employer to say he was going to be late due to car problems, but he never reported to work, because he believed that he would have been discharged anyway for being late.

The employer discharged the claimant for excessive absenteeism in violation of the employer's policies because he was again at ten attendance points.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. He could have reported late for work and perhaps saved his job, but he chose not to report.

DECISION:

The unemployment insurance decision dated March 27, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw