

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYSON R THOMPSON**  
Claimant

**APPEAL NO. 09A-UI-02750-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 05/04/08**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Swift & Company filed a timely appeal from an unemployment insurance decision dated February 11, 2009, reference 03, that allowed benefits to Tyson R. Thompson. After due notice was issued, a telephone hearing was held March 11, 2009 with Mr. Thompson participating. Human Resources Coordinator Aaron Vawter participated for the employer. Employer Exhibit One was admitted into evidence.

**ISSUE:**

Was the claimant discharged for excessive unexcused absenteeism?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tyson R. Thompson was a production worker for Swift & Company from October 27, 2008 until he was discharged December 29, 2008. Mr. Thompson was absent between December 22, 2008 and December 29, 2008 because of medical reasons. He contacted the employer each day. He was discharged because of excessive absences.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for excessive unexcused absenteeism. It does not.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). While excessive unexcused absenteeism is misconduct, the Supreme Court of Iowa has ruled that absence due to a medical condition cannot be held against an employee for unemployment insurance purposes provided the employee properly reports the absences to the employer. See Higgins and 871 IAC 24.32(7).

The evidence in this record establishes that the absences leading directly to the claimant's discharge were for a medical condition and were properly reported to the employer. No disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated February 11, 2009, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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