

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA L ANDREWS
Claimant

APPEAL NO. 08A-UI-10437-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 09/14/08 R: 01
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 October 28, 2008, reference 01, that allowed benefits to Joshua L. Andrews. After due notice was issued, a telephone hearing was held November 25, 2008 with Mr. Andrews participating. Human Resources Coordinator Aaron Vawter participated for the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

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: Joshua L. Andrews was employed as a production worker by Swift & Company from July 30, 2007 until he was discharged September 16, 2008. The final incident leading to his discharge was his late arrival on September 16, 2008. Mr. Andrews had notified the employer by telephone message at approximately 6:00 a.m. that he would be late because he needed to see a doctor. He called later in the morning to confirm the reason for his late arrival and was told that he would be discharged in any event because he was on a 90-day contract during which time he could not miss any work at all.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). While excessive unexcused absenteeism is misconduct, absence because of a medical condition cannot be held against an employee for unemployment insurance purposes if the employee properly reports the absence to the employer. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). The evidence in this record persuades the administrative law judge that the final incident leading to Mr. Andrews' discharge was an absence because of a medical condition. Under these circumstances, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated October 28, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs