

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW M BOL**  
Claimant

**APPEAL NO. 09A-UI-16144-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**Original Claim: 09/13/09  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Andrew Bol filed an appeal from a representative's decision dated October 5, 2009, reference 01, which denied benefits based on his separation from Swift & Company. After due notice was issued, a hearing was held by telephone on April 22, 2010. Mr. Bol participated personally and was represented by John Hemminger, Attorney at Law. The employer participated by Tony Luse, Employment Manager. Magdy Salama participated as the interpreter.

**ISSUE:**

At issue in this matter is whether Mr. Bol was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bol began working for Swift on June 16, 2008 and worked full-time in production. He was discharged because of his attendance. He was absent without notice to the employer on September 20, 2008. He was absent for unknown reasons on October 13, 2008 and received a written warning regarding attendance on October 13, 2008. Because of continuing problems with attendance, he was placed on a 90-day probation as of March 31, 2009. He successfully completed the probation.

Mr. Bol was absent on September 8, 2009 because of a doctor's appointment. He was having problems he felt were due to a work-related injury he sustained in July of 2008. The doctor's appointment was made by his supervisor, who knew Mr. Bol would not be at work on September 8 because of the appointment. Mr. Bol went to work on September 9 but did not call or report on September 10. He worked slightly over five hours before being discharged on September 11. Attendance was the sole reason for the discharge.

## **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 benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

The employer contended that Mr. Bol was absent without notice on September 8, 2009. However, the administrative law judge found Mr. Bol's testimony regarding September 8 to be more persuasive. Since he was alleging a condition that resulted from a previous work injury, it seems more likely than not that the employer would have taken steps to schedule him for medical care. Therefore, his testimony that the employer scheduled the September 8 doctor's appointment for him was credible. Having scheduled the appointment for him, the employer knew or should have known he would be absent from work on September 8.

The employer had no notice that Mr. Bol would be absent on September 10. Although he testified that he was fired on September 9, the employer's records have him clocking in and out for work on September 11. There would seemingly be no reason for him to return to work on September 11 if he had been fired two days earlier. The evidence of record does not establish any justification for Mr. Bol's failure to notify the employer he would be absent on September 10. He had been warned about his attendance, which included an unreported absence less than one year prior to his separation.

Mr. Bol's failure to report his intended absence of September 10 after having been warned about his attendance constituted a substantial disregard of the standards he knew the employer expected of him. Misconduct has been alleged as the reason for discharge and misconduct has been established by the evidence. Accordingly, benefits are denied.

## **DECISION:**

The representative's decision dated October 5, 2009, reference 01, is hereby affirmed. Mr. Bol was discharged by Swift for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw