

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIA J KHAMIS**

Claimant

**APPEAL NO. 09A-UI-17568-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**

Employer

**OC: 10/11/09**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Julia Khamis filed a timely appeal from a representative's decision dated November 16, 2009, reference 01, that denied unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 18, 2009. The claimant participated personally. The employer participated by Mr. Tony Luse, Employment Manager. Employer's Exhibits One, Two and Three were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Julia Khamis was employed by Swift & Company from November 24, 2008 until October 12, 2009 when she was discharged from employment. Ms. Khamis worked as a full-time second shift production worker and was paid by the hour.

The claimant was discharged after she exceeded the permissible number of attendance infractions allowed under company policy. The claimant was aware of the policy and was aware that she would be discharged if she exceeded the permissible number of attendance infractions allowed.

The claimant's final two attendance infractions took place on October 9 and 10, 2009. On October 9, the claimant called in indicating that she could not report due to lack of childcare. The following day, October 10, the claimant had gone out of town and had not returned soon enough to report for her scheduled shift.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

Ms. Khamis was discharged after she exceeded the permissible number of infractions allowed under the company's established attendance policy. The evidence establishes that Ms. Khamis was aware of the policy and was aware that she could be discharged if she was excessively absent. As a production worker the claimant's attendance is especially important to the company as the absence of a production worker causes extra work for other employees and may affect the productivity of the organization.

The claimant was discharged after she failed to report on October 9 because she failed to secure childcare and the following day because she had gone out of town and had not returned in time to report for work.

Although sympathetic to the claimant's situation, the administrative law judge finds the most recent reasons for the claimant's attendance infractions to be within her control and unexcused under company policy. The claimant's absences were due to matters of personal responsibility and not due to factors over which the claimant had no control. Benefits are withheld.

**DECISION:**

The representative's decision dated November 16, 2009, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, providing that she is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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