

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY R EDWARDS
Claimant

APPEAL NO. 09A-UI-16810-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 09/20/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Randy Edwards filed an appeal from a representative's decision dated October 27, 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 December 14, 2009. Mr. Edwards participated personally. The employer participated by Javier Sanchez, Assistant Human Resources Manager.

ISSUE:

At issue in this matter is whether Mr. Edwards 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. Edwards began working for Swift on January 12, 2009 as a full-time production worker. He was absent without calling in on June 1. Due to this and other absences, he was discharged on September 5 because of his attendance. Because of an error in calculating his attendance points, he was reinstated on September 28. He knew at that time that he could be discharged if he accumulated two additional attendance points.

Mr. Edwards called in sick on October 2 and worked on October 3. He called over two hours after the start of his shift on October 5 because he overslept. He did not call or work on October 6 or October 7. The employer terminated the employment on October 8, 2009. Attendance was the sole reason for the separation.

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.

Mr. Edwards was employed by Swift for approximately nine months. During that time, he had unexcused absences on June 1, October 5, October 6, and October 7. All four absences are unexcused as they were not timely or properly reported to the employer. Either he did not call at all or called after the start of his shift. He had already been discharged on September 5 because of his attendance. Therefore, he knew or should have known at the time of his reinstatement that he could be fired again if he continued to have attendance issues.

Mr. Edwards had three consecutive unexcused absences after his reinstatement. The administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. Accordingly, benefits are denied.

DECISION:

The representative's decision dated October 27, 2009, reference 01, is hereby affirmed as to result. Mr. Edwards was discharged for disqualifying misconduct. 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs