

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON T HARRIMAN**  
Claimant

**APPEAL NO: 09A-UI-15881-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 09/13/09**  
**Claimant: Respondent (2/R)**

Section 96.5-2- a- Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's October 9, 2009 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 23, 2009. The claimant did not respond to the hearing notice or participate in the hearing. Tony Luse, the employment manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 6, 2006. The claimant worked as a full-time maintenance mechanic. The employer's attendance policy informs employees they can be discharged if they accumulate ten attendance points in a rolling calendar year.

Although the claimant had been absent a number of days the last months of his employment, his job was not in jeopardy. He only had five attendance points as of September 12, 2009. The claimant called on September 13 and 14 to report he was ill and unable to work. When the claimant reported to work on September 15, he gave the employer a doctor's note verifying he had been ill and unable to work on September 13 and 14, 2009. When an employee has a doctor's note, the employee receives only one point instead two points for being absent two days.

While talking to Luse on September 15, the claimant acknowledged he had not been ill either day. Instead, the claimant had been at his home laying pipe in his basement. The claimant indicated he had not been truthful so he would not get into trouble. The claimant assumed his supervisor would not grant him time off to work on his basement because of his previous absences.

If his supervisor had denied him time off, the claimant could have asked a human resource representative for time off. Instead of calling in sick on September 13 and 14, the claimant could have called and reported he was taking personal time off. He would have only been assessed one attendance point for each day he did not work.

Since the claimant had not been truthful about the reason for his September 13 and 14 absences and even obtained a doctor's statement that was not accurate, the employer discharged the claimant for dishonesty.

The claimant established a claim for benefits during the week of September 13, 2009. The claimant has filed for and received benefits since September 13, 2009.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant committed work-connected misconduct when he called in sick and was not. The claimant compounded his dishonesty by providing the employer with a doctor's note indicating he had been ill on September 13 and 14 when he was not ill. The claimant could have worked as scheduled but did not because he laid down pipe in his basement these two days. The claimant's dishonesty amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for work-connected misconduct. As of September 13, 2009, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment shall be remanded to the Claims Section.

#### **DECISION:**

The representative's October 9, 2009 decision (reference 01) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 13, 2009. This disqualification

continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs