

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RYAN A MILLER**  
Claimant

**APPEAL NO. 09A-UI-04667-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**Original Claim: 02/22/09  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ryan Miller filed an appeal from a representative's decision dated March 17, 2009, reference 01, which denied benefits based on his separation from Swift & Company. After due notice was issued, a hearing was held by telephone at 4:00 p.m. on April 21, 2009. The employer participated by Aaron Vawter, Human Resources Coordinator. Mr. Miller responded to the notice of hearing. Five attempts were made to contact him at the scheduled time of the hearing, but his line was busy on all five occasions. He did not contact the Appeals Bureau until approximately 4:19 p.m. He did not establish good cause for not participating at the scheduled time and, therefore, the administrative law judge declined to reopen the hearing record. Documents sent by Mr. Miller prior to the hearing were admitted as Exhibit A.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Miller was employed by Swift from July 7, 2008 until February 23, 2009 as a full-time production worker. He was last assigned to the second shift that worked from 3:30 p.m. until 12:00 midnight. He was discharged due to his attendance.

Prior to February 19, 2009, all of Mr. Miller's absences were due to either his own illness or that of his child. He presented doctor's statements to support the bulk of his absences. All of the absences were properly reported. He received warnings about his attendance on September 18 and October 28, 2008. He also received attendance warnings on January 5, January 13 and January 28, 2009. The decision to discharge was based on the fact that Mr. Miller was absent on February 19 and February 20 because of house inspections. He was notified of his discharge on February 23, 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. 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 grounds and it must be properly reported. 871 IAC 24.32(7).

All of Mr. Miller's absences prior to February 19 were for reasonable cause, either his own illness or that of a child. Since they were all properly reported, they are all excused absences. Absences due to matters of purely personal responsibility are not excused absences. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Miller's absences of February 19 and 20 were due to a personal matter, the need for a housing inspection. Because the absences were due to a matter of personal responsibility, they are unexcused.

Given the warnings he had received regarding his attendance, Mr. Miller had to have known that his continued employment with Swift was in jeopardy. His work shift did not begin until 3:30 in the afternoon. There would seemingly be no reason he could not schedule his personal appointments for earlier in the day to avoid missing time from work and further jeopardizing his employment. Because of his prior warnings, the administrative law judge concludes that Mr. Miller's two consecutive unexcused absences are sufficient to establish excessive unexcused absenteeism. 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. For the reasons cited herein, benefits are denied.

**DECISION:**

The representative's decision dated March 17, 2009, reference 01, is hereby affirmed. Mr. Miller 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 satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw