

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER STONE
Claimant

APPEAL NO. 07A-UI-10196-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 01/07/07 R: 02
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Christopher Stone, filed an appeal from a decision dated October 31, 2007, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 20, 2007. The claimant participated on his own behalf. The employer, Swift, participated by Employment Manager Tony Loufe.

ISSUE:

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

FINDINGS OF FACT:

Christopher Stone was employed by Swift from July 30 until September 27, 2007, as a full-time laborer. He had been absent due to funeral leave and personal sick leave for a number of days. Some absences were excused and some were not, and on September 4, 2007, he “signed off” on his time sheet that he understood he had accumulated five points. Discharge can occur at ten points.

Mr. Stone was absent on September 25, 26, and 27, 2007, due to complications of a work-related injury. He called in each day and on September 26, 2007, brought in a doctor’s note to the health services office, saying he should not work until he had an MRI performed on September 28, 2007. He was summoned to the work place on September 27, 2007, and discharged by someone from the personnel office named Aaron, who stated he had been absent without excuse for the past three days. Mr. Stone explained he had brought in the doctor’s note and given it to health services, but he was told he was still discharged.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had maintained he had proper doctor's excused for all his absences, including the last three days. The employer did not present any rebuttal testimony disputing this. It appears the claimant complied with the employer's policies and brought in excused for his absences. A properly reported illness cannot be considered misconduct as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). There was no current final act of misconduct which precipitated the discharge as required by 871 IAC 24.32(8) and disqualification may not be imposed.

DECISION:

The representative's decision of October 31, 2007, reference 03, is reversed. Christopher Stone is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw