

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MALONG DIING**

Claimant

**APPEAL NO. 09A-UI-16024-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**

Employer

**Original Claim: 09/27/09**

**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Malong Diing filed an appeal from a representative's decision dated October 20, 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 1, 2009. Mr. Diing participated personally. The employer participated by Javier Sanchez, Human Resources Manager.

**ISSUE:**

At issue in this matter is whether Mr. Diing 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. Diing was employed by Swift & Company from June 9, 2008 until September 28, 2009 as a full-time production worker. He was discharged because of his attendance.

Mr. Diing was absent without calling in on November 29 and December 2, 2008. He received a written warning on January 5, 2009. He was absent because of car problems on August 22, 25, 26, and 29. He received a warning dated August 26. He was placed on probation and given a final opportunity to improve his attendance on August 31. The decision to discharge was based on the fact that Mr. Diing was absent without calling in on September 26. He was absent on this date due to car problems. He was notified of his discharge on September 28, 2009. In addition to the absences referred to herein, he had other absences but they were all due to illness. Attendance was the sole reason for the discharge.

**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.

Absences due to matters of purely personal responsibility, such as transportation, are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Diing missed four days of work in August and one in September due to transportation issues. Whether he called on September 26 to report the absences or not, the fact remains that the absence is unexcused because it was due to lack of transportation. The fact that the employer may have been aware of his transportation problems did not alter the fact that the employer expected him to find a way to get to work.

The five unexcused absences referred to herein occurred over a period of approximately one month. The administrative law judge considers this excessive. Mr. Diing had been amply warned that his continued employment with Swift was in jeopardy because of his attendance. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. As such, it constitutes disqualifying misconduct. For the reasons cited herein, benefits are denied.

**DECISION:**

The representative's decision dated October 20, 2009, reference 01, is hereby affirmed. Mr. Diing 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 is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw