

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY A HASKIN**  
Claimant

**APPEAL NO: 10A-UI-06182-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 03/21/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's April 16, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive benefits. A telephone hearing was held on May 20, 2010. The claimant participated in the hearing. Joe Nevel, a training manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in November 2008. The claimant worked full time in the mechanical maintenance department. The claimant understood employees could be discharged if they violated the employer's attendance policy by accumulating ten or more attendance points in a year.

On February 11, 2010, the employer gave the claimant his last written warning for accumulating eight attendance points. After he received the February 11 warning, the claimant received one point for notifying the employer on February 25 he would be late for work, but did not report to work or call again. On March 7, the claimant received a half point for leaving work early. The claimant received another half point on March 11 when he reported to work late.

On March 14, when he was at work, the claimant hurt himself. The employer's nurse saw him and wrote out a report. The employer's nurse did not schedule a doctor's appointment at that time because it was the weekend. The claimant was unable to work the next day as scheduled because of the injury to his tailbone. He called the employer to report he could not work that day. The employer's nurse made the claimant a doctor's appointment for Tuesday, March 16, 2010. After his doctor's appointment, the doctor released him to return to light-duty work. The

claimant reported to work with the light-duty work restrictions. The claimant was on light-duty work for three days.

On March 18, 2010, the employer discharged the claimant for excessive absenteeism. The employer considered the claimant's most recent absences as unexcused. The recent absences were related to his work-related injury.

#### **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. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7)

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The facts establish the employer discharged the claimant for absences he incurred as a result of a work-related injury. The claimant properly reported the injury to the employer's nurse and notified the employer the next day to report he was unable to work. The claimant was unable to work because of the work-related injury. The claimant had no control over when the nurse scheduled an appointment for him. As soon as a doctor's appointment was scheduled, the claimant went to the appointment. The claimant reported to work when the doctor released him to work with light duty work restrictions.

The employer established justifiable business reasons for discharging him when he accumulated more than ten attendance points in a year. The claimant did not intentionally or substantially fail to work as scheduled. The employer's requirement that the claimant report to work instead of just calling in after he was injured is not reasonable. For unemployment insurance purpose, the claimant is qualified to receive benefits.

#### **DECISION:**

The representative's April 16, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 21, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs