

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADSON L RABEH**  
Claimant

**APPEAL NO. 09A-UI-06504-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**Original Claim: 04/05/09  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 23, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 21, 2009. The claimant participated. The employer participated through Tony Luse. Magdy Salama provided Arabic interpretation for the hearing.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct or voluntarily quit by failing to call or show up at work for three consecutive workdays in violation of a known company rule.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The employer alleged the claimant failed to report for work or notify the employer of his absences for three consecutive scheduled workdays on March 6, 9, and 10, 2009, in violation of the employer's policy. The employer has a written three-day no-call/no-show policy that provides that violation of the policy is considered a voluntary quit. The claimant was provided a copy of that policy.

The claimant was suspended on March 3, 2009. He was suspended pending an investigation of whether the claimant violated the lock-out/tag out policy on a machine he was working on. He was told to go home. The suspension notice provided a start date for the suspension of March 3, 2009 with no ending date. He was told he would be contacted by his employer. The claimant left a friend's phone number for the employer to call to reach him. The employer tried a number of times to use that number without success. The employer did not send any notice to the claimant. The employer discharged the claimant for not calling in on March 6, 9, and 10. The employer testified that the claimant would likely be terminated for the failure to follow the lock-out-tag-out procedure. The claimant testified he followed the policy as he understood it. The employer did not call as a witness anyone who saw the claimant work on the machine in violation of lock-out/tag-out procedures.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The claimant was on suspension. The employer told him that they would contact him. The claimant did not violate the three-day no-call/no-show rule. The employer did not write the claimant to let him know he needed to call. The claimant did not voluntarily quit.

The employer has also failed to prove he was discharged for misconduct. First, he was discharged for the alleged violation of the three-day no-call/no-show rule. While he may have been discharged in the future for violation of the lock-out/tag-out rule, that was not the actual reason he was discharged. Speculation as to a reason or cause that might have been used as grounds for a discharge in the future is not appropriately considered in this case. Even if it were to be considered, the employer has not shown misconduct. The claimant testified under oath he tried to comply with the lock-out/tag-out procedures. The employer read into the record notes from individuals who were not under oath and subject to cross examination. I find the claimant did attempt in good faith to comply with the lock-out/tag-out rules and did not commit misconduct.

**DECISION:**

The April 23, 2009, reference 01, decision is reversed. The claimant was discharged and did not voluntarily quit or commit misconduct. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/kjw