

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY G BLACKCLOUD
Claimant

APPEAL NO. 08A-UI-05881-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 06/01/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated June 26, 2008, reference 01, which denied benefits based upon her separation from Swift & Company. After due notice was issued, a hearing was held by telephone on July 11, 2008. Ms. Blackcloud participated personally. The employer participated by Tony Luce, Employment Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from March 19, 2007 until June 4, 2008 when she was discharged from employment. Ms. Blackcloud was employed as a full-time production worker and was paid by the hour.

The claimant was discharged when the employer believed that she had not complied with company policy by calling in each day to report her impending absences. The claimant had been off work by order of her physician due to problems associated with her pregnancy. The claimant had been given FMLA paperwork to have her doctor complete by the company. Ms. Blackcloud called in each day to report her impending absences that had been ordered by her physician because of her medical condition. On June 4, 2008, when the claimant came to the company offices to resolve a pay dispute the employer reviewed her FMLA paperwork and found it to be complete. Subsequently, however, the employer concluded the claimant had not called in each day as required. Occurrence points were assessed against the claimant for the days the employer believed she had not called in. When the number of attendance occurrence points exceeds the permissible level allowed by company policy, employees are subject to discharge. The claimant was informed at that time that she was terminated from employment.

Ms. Blackcloud has been released by her physician and is available for work as of the time she began claiming unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Blackcloud was discharged for misconduct in connection with the employment. It does not. Based upon the evidence in the record, the administrative law judge concludes that the claimant had been off work due to a medical reason that had been verified by her physician. The claimant is found to be credible in her testimony that she called in each day to report her impending absences. The evidence establishes that Ms. Blackcloud had called in in the past reporting her impending absences and that the claimant had attempted to show individuals in the personnel department that she had called in at the time of her discharge.

The Iowa Supreme Court has held that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

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.

For the reasons stated herein, the administrative law judge concludes that the claimant's discharge took place under non disqualifying conditions. The claimant was unable to report to work due to a verifiable medical condition and had provided reasonable notification to the

employer as required by policy. The claimant is able and available for work at the time of hearing.

DECISION:

The representative's decision dated June 26, 2008, reference 01, is hereby reversed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs