

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABDELFARAG H SALIH
Claimant

APPEAL NO. 09A-UI-04713-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 03/01/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 19, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 22, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Magdy Salama. Tony Luse participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from March 10, 2008, to February 20, 2009. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. Under the employer's attendance policy, employees were subject to termination if they incurred ten attendance points or three unexcused absences. The claimant had received warnings regarding his attendance.

As of February 23, 2009, the claimant had nine attendance points and two unexcused absences. The claimant's wife was in the hospital that day and the claimant was required to care for his eleven and seven-year-old children. He notified management with the employer that he would not be reporting to work that day and why.

When the claimant did not report to work on February 22, the employer discharged the claimant for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony was credible that it was his own children that he needed to watch due to a medical emergency.

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated March 19, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw