

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER L MOSA
104 W GRACE ST
TOLEDO IA 52342-1318**

APPEAL NO. 09A-UI-19628-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SWIFT & COMPANY
c/o UNEMPLOMENT SERVICES LLC
PO BOX 749000
ARVADA CO 80006-9000**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER L MOSA
Claimant

APPEAL NO. 09A-UI-19628-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 11/01/09
Claimant: Respondent (2/R)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's December 21, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reason. A telephone hearing was held on February 10, 2010. The claimant did not respond to the hearing notice or participate in the hearing. Tony Luse, the employment manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 1, 2009. The claimant worked as a full-time employee. At the time of hire, the employer informed the claimant about the employer's attendance policy. This policy informs employees that if they accumulate ten attendance points in less than a year or have three unexcused absences within a year, they will be discharged for violating the attendance policy.

During the claimant's employment, he had a number of attendance issues. He accumulated points when he was ill, had family problems, had a car accident, had to pick up his child, his child was ill and when his vehicle needed to be repaired. On August 18 and 22, the claimant received unexcused absences, one for each day.

On October 24, the claimant had transportation problems and did not work as scheduled. The employer told the claimant that if he brought in some documentation indicating he had worked on his vehicle, the employer would not consider the October 24 absences as unexcused. If it was unexcused, the employer could have discharged the claimant on October 24 for having three unexcused absences in less than a year. The claimant provided the requested documentation.

On October 26, the claimant was late for work. As of October 26, the claimant had 9.5 attendance points. The employer talked to the claimant and warned him that this was the very last time he could be late or absent from work. On October 28, the claimant was again late for work. He received a half point for reporting to work late. On October 28, he accumulated ten attendance points. The employer discharged the claimant on October 28 for violating the employer's attendance policy.

The claimant established a claim for benefits during the week of November 1, 2009. He has filed for and received benefits since November 1, 2009.

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 § 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). Based on the evidence presented during the hearing, the claimant knew or should have known his job was in jeopardy because of on-going attendance issues. Although he knew his job was in jeopardy, he reported late for work on October 26 and 28. The claimant's excessive absenteeism amounts to an intentional disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of November 1, 2009, the claimant is not qualified to receive benefits.

Since the claimant has filed for and received benefits since November 1, 2009, the issue of overpayment or whether he is eligible of a waiver of any overpayment will be remanded to the Claims Section.

DECISION:

The representative's December 21, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 1, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is Remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw