

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR R QUINTANILLA
Claimant

APPEAL NO: 09A-UI-15552-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 06/07/09

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Victor R. Quintanilla (claimant) appealed a representative's October 14, 2009 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 19, 2009. The claimant participated in the hearing. Tony Luse appeared on the employer's behalf. Ike Rocha served as interpreter. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 19, 2008. He worked full time as a production worker on the second shift in the employer's Marshalltown, Iowa pork processing facility. His last day of work was September 19, 2009. The employer discharged him on September 22, 2009. The reason asserted for the discharge was excessive absenteeism.

The claimant was on notice of the employer's attendance policy which provides for discharge for three unexcused absences in a year. The claimant had absences on March 2 and March 3 due to having personal things to do, including moving. These were not excused in advance, and thus resulted in two unexcused absences, for which he received a warning on March 4.

On September 20 the claimant was arrested and held overnight in jail. He was released from jail at approximately 9:00 a.m. He was not scheduled to report for work until 3:00 p.m. He got a ride home, but then did not report for work and did not call to report his absence. He claimed that he did not report to work due to having an upset stomach, possibly self-induced by alcohol consumption. He did not provide a reasonable explanation as to why, even if he had been ill, he had not called to report his absence. As the claimant was a no-call/no-show for work on

September 21, this was treated as the third unexcused absence. As a consequence, when he sought to return to work on September 22 he was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional. Cosper, supra. However, the claimed illness-related absence in this matter was not properly reported, nor was an acceptable reason provided to excuse the failure to properly report the absence. Therefore, the claimant's final absence was not excused and was not due to properly reported illness or other reasonable grounds. The claimant had previously been warned that future unexcused absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's October 14, 2009 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 22, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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