

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HAMAD K SALIH**  
Claimant

**APPEAL NO: 07A-UI-06272-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 05//27/07 R: 02**  
**Claimant: Respondent (1/R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Swift & Company (employer) appealed a representative's June 15, 2007 decision (reference 01) that concluded Hamad K. Salih (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 10, 2007. The claimant participated in the hearing with his attorney, John Hemminger. Tony Luse, the assistant human resource manager, appeared on the employer's behalf. Francis Chan interpreted during the hearing. During the hearing, Claimant Exhibits A, B, C, D, E, F and G were offered and admitted as evidence. 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:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 12, 2005. The claimant worked as a full-time laborer. On March 20, 2007, the claimant reported injuring his shoulder at work. The claimant initially went to the employer's physician about this injury.

On May 4, 2007, the claimant notified the employer he was ill and unable to work. The claimant still had problems with the shoulder he reported he had injured in March. The claimant went to his personal physician at McFarland Clinic on May 6 or 8, 2007. The claimant's doctor indicated the claimant had right shoulder pain and excused him from work May 4 through May 11, 2007. (Claimant Exhibit C.) The claimant gave this doctor's statement to a human resource representative the same day he received it. The claimant's physician examined the claimant again on May 10, 2007. The claimant obtained a doctor's statement on May 10 indicating he was restricted from work through May 16, 2007. (Claimant Exhibit D.) The claimant gave this

doctor's statement to a human resource representative on May 11. On May 18, the claimant had another doctor's appointment. The claimant's physician again gave the claimant a doctor's statement indicating the claimant could not work through May 23, 2007. (Claimant Exhibit E.) The claimant gave this doctor's statement to a human resource representative on May 18, 2007.

When the claimant had a doctor's appointment on May 23, the doctor restricted the claimant from work through May 30, 2007. (Claimant Exhibit F.) When the claimant brought in this doctor's statement, the employer informed the claimant that he no longer worked for the employer because the employer considered him to have voluntarily quit his employment. Luse understood the claimant had not contacted the employer or reported to work from May 4 through May 22, 2007. The employer's policy informs employees that if they do not contact the employer or report to work for three consecutive days, the employer considers the employee to have voluntarily quit employment. As of May 16, 2007, the employer no longer considered the claimant an employee.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The facts do not establish that the claimant intended to quit his employment. The fact that he kept going to the doctor and obtaining statements restricting him from work supports the conclusion that the claimant did not voluntarily quit his employment. Instead, the employer initiated the employment separation and discharged the claimant.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's testimony must be given more weight than the employer's reliance on unsupported reports from people who did not testify at the hearing. Therefore, a preponderance of the credible evidence reveals the claimant advised the employer on May 6 or 8, 11, 18 and 22 that he saw his personal physician who restricted him from performing any work these weeks. The employer's assertion that the claimant did not contact the employer between May 4 and 18 or 22 is not supported by the facts presented in this case. The employer may have had business reasons for discharging the claimant, but the claimant did not intentionally or substantially fail to work as scheduled. Instead, he notified the employer when he was unable to work and doctor's statements verify that he was unable to work and medically restricted from

working May 4 through May 23. The claimant did not commit work-connected misconduct. As of May 27, 2007, the claimant is qualified to receive unemployment insurance benefits.

Since the claimant was released to work with restrictions (Claimant Exhibit G), the issue of whether the claimant is able to and available for work as of May 27, 2007, is remanded to the Claims Section to investigate and issue a written decision.

**DECISION:**

The representative's June 15, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 27, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. An issue of whether the claimant is eligible to receive benefits as of May 27 or whether he is able to and available for work as of this date with the work restrictions he had is remanded to the Claims Section to investigate and issue a written decision.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs