

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN P BRATLAND
Claimant

APPEAL NO. 06A-UI-09610-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 08/27/06 R: 02
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Shawn P. Bratland (claimant) appealed a representative's September 19, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Swift & Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 16, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, 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 January 31, 2006. The claimant worked as a full-time mechanic. The claimant understood the employer would discharge an employee if the employee accumulated ten unexcused attendance points.

The claimant started missing work because of an ear infection in early July. From July 1 through 5, the claimant was unable to work as scheduled because of an ear infection. The claimant called the employer each day he was unable to work as scheduled. The claimant provided the employer with a doctor's excuse verifying he was ill and unable to work as scheduled.

As of August 7, the claimant understood he had five attendance points. The claimant notified the employer he was unable to work August 7 through 9 because of a back injury. The claimant again had problems with an ear infection August 15 through 19. The claimant again notified the employer each day he was unable to work. The claimant had an appointment with a specialist

on August 21. The claimant planned to obtain a doctor's note to give to the employer for his August 15 through 19 absences on August 21. The employer knew the claimant had surgery scheduled on August 29, 2006. The employer no longer considered the claimant an employee as of August 19, 2006.

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 section 96.5-2-a. 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 employer may have had compelling business reasons for discharging the claimant. The claimant may have even accumulated ten or more attendance points and violated the employer's policy. The evidence, however, establishes that the claimant properly notified the employer when he was ill and unable to work. The facts also indicate the claimant as absent from work because he was ill or unable to work as scheduled. Therefore, the claimant did not commit work-connected misconduct. As of August 27, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 19, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected

misconduct. As of August 27, 2006, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs