

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW T HICKS
Claimant

APPEAL NO: 10A-UI-05379-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 02/28/10
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 5, 2010, reference 01, that held he voluntarily quit without good cause on February 2, 2010, and benefits are denied. A telephone hearing was held on May 26, 2010. The claimant participated. Joe Nevell, Training Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time production worker on March 16, 2009, and last worked for the employer on January 11, 2010. The claimant suffered a non-job-related knee injury on January 12, and was treated for a right knee-cap dislocation. The claimant provided a doctor's note to the employer on January 13 that he would be off work for two weeks. The employer expected his return on January 27.

About a week after the injury, the claimant came into work and spoke with an employer HR representative stating his return to work deadline had been moved to February 15. The claimant did not provide any additional doctor statement at that time.

When the employer did not receive a doctor's statement extending the return to work deadline by February 2, it sent a termination statement to the claimant that he was a voluntary quit for being a no-call/no-show for three consecutive days. The claimant immediately responded to the termination statement he received in the mail on February 6 by meeting with the employer on February 8. The claimant provided an additional doctor's statement that he was receiving physical therapy from January 27 to February 9 dated February 16. After reviewing the additional documentation and considering the claimant's information, the employer affirmed his employment termination.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on February 2, 2010.

The claimant offered un-refuted testimony he visited with an employer HR representative about a week after his injury to let him know the return to work date had been extended beyond January 27. If the employer had an issue with this matter, it could have requested a doctor's statement to verify it. It appears the employer did not record this claimant report that led to his termination on February 2 for failing to return to work by January 27. The credibility of the claimant's testimony is supported by the doctor statement he submitted to try and save his job that he was under doctor's care for physical therapy from January 27 through February 9.

The employer decision to terminate as a voluntary quit for no-call/no-show is not consistent with the claimant's separation from employment testimony. The employer decision to stand on the termination is a discharge for no act of misconduct.

DECISION:

The department decision dated April 5, 2010, reference 01, is reversed. The claimant was not discharged for misconduct on February 2, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css