

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID W LURVET**  
Claimant

**SWIFT & COMPANY**  
Employer

**APPEAL NO. 09A-UI-15137-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/13/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated October 1, 2009, reference 01, that held he was discharged for misconduct on August 25, 2009, and benefits are denied. A telephone hearing was held on November 9, 2009. The claimant participated. Tony Luse, Employment Manager, participated for the employer. Employer Exhibits One thru Four was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began full-time employment on July 2, 2007, and last worked on the kill floor on August 25, 2009. The employer has a policy that prohibits the wasting of product. The claimant was issued written warnings for wasting company product on September 11, 2008, January 7, 2009, and a final warning on January 23, 2009. The claimant was discharged for wasting company product on August 25, 2009.

**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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

The employer issued multiple warnings that included a final warning to the claimant for wasting company product. The claimant was discharged for misconduct by wasting product on August 25, 2009 in light of the prior warnings.

**DECISION:**

The decision of the representative dated October 1, 2009, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on August 25, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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