

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANWAR WAU
Claimant

APPEAL NO. 08A-UI-09641-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 07/27/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 10, 2008, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on November 5, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Tony Luse participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a production worker for the employer from April 9, 2007, to July 22, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge if they had more than 10 attendance occurrences.

As of July 8, 2008, the claimant had ten attendance occurrences: October 19, 2007 (late), October 27, 2007 (absent without notice), January 12, 2008 (absent due to family problems), February 15, 2008 (left work early due to illness), February 25-29, 2008 (absent due to illness), March 10-11, 2008 (absent due to family member illness), March 31, 2008 (absence without notice), May 30-31, 2008 (absent due to family member illness) and July 3, 2008 (absent without notice). On July 8, 2008, he was placed on a 90-day attendance contract that stated that he would be discharged if he had another attendance occurrence in the next 90 days.

On July 23, 2008, the claimant was scheduled to work at 3:00 p.m. His son was sick and he could not find anyone to take care of him. He called in before the start of his shift and informed the employer that he was unable to report to work.

On July 24, 2008, the employer discharged the claimant for excessive absenteeism and violating the 90-day attendance contract.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(8) provides that while past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established. The final absence was for a legitimate medical emergency involving his child.

DECISION:

The unemployment insurance decision dated October 10, 2008, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs