

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRENDA L FRELAND**  
Claimant

**APPEAL NO. 09A-UI-14842-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 08/30/09**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Brenda Freland filed an appeal from a representative's decision dated September 25, 2009, reference 01, which denied benefits based on her separation from Swift & Company. After due notice was issued, a hearing was held by telephone on November 3, 2009. Ms. Freland participated personally and offered additional testimony from Roger Kail. The employer responded to the notice of hearing but the designated witness was not available at the scheduled time of the hearing. The employer did not have anyone available to participate in the hearing.

**ISSUE:**

At issue in this matter is whether Ms. Freland was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Freland was employed by Swift from November 29, 2006 until August 29, 2009. She worked full time in production. She was discharged because of her attendance. The final absence was on August 28, 2009 and was due to injuries she sustained in a fight with her boyfriend. The next most prior attendance infraction was on August 5, 2009. Attendance was the only reason given Ms. Freland for her discharge.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work. There

must be a current act of unexcused absenteeism to support a disqualification from job insurance benefits. See 871 IAC 24.32(8).

The final absence that prompted Ms. Freland's discharge occurred on August 28 and was due to injuries she had sustained in a fight. Regardless of the source of the injuries, the fact remains that they prevented her from working. As such, the absence of August 28 was for medical reasons. Inasmuch as there was no evidence that the absence was not properly reported, it is excused. The next most prior attendance infraction was on August 5 and would not, therefore, be a current act in relation to the August 29 discharge.

The employer failed to satisfy its burden of proving that Ms. Freland was discharged for a current act of disqualifying misconduct. While the employer may have had good cause to discharge her, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

**DECISION:**

The representative's decision dated September 25, 2009, reference 01, is hereby reversed. Ms. Freland was discharged by Swift but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs