

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFERSON A JAMES**  
Claimant

**APPEAL NO. 09A-UI-11118-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**Original Claim: 07/05/09  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Jefferson A. James (claimant) appealed a representative's July 31, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Swift & Company, doing business as JBS Marshalltown (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 19, 2009. The claimant participated in the hearing. Tony Luse appeared on the employer's behalf and presented testimony from one other witness, Aaron Vawter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 27, 2008. He worked full-time as a production worker at the employer's Marshalltown, Iowa, pork processing facility on the second shift. His last day of work was May 8, 2009. The employer discharged him on May 18, 2009. The reason asserted for the discharge was excessive absenteeism.

On April 22, 2009, the claimant was given a last chance agreement and warning under which he could have no unexcused absences in the next 90 days; he had eleven prior attendance occurrences, including seven for illness, one for a family issue, but three for transportation issues.

The claimant was a no-call, no-show for work on May 11 and May 12; on May 13 he called in and left a message that he was sick; on May 14 and May 15 the claimant was a no-call, no-show. When he sought to return to work on May 18, he was informed he was discharged due to his attendance.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has

the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional. Cosper, supra. However, the employer provided sufficient information to meet its burden to show that the claimed illness-related absence in this matter was not properly reported, and the claimant did not present convincing information to rebut this conclusion or provide an acceptable reason provided to excuse the failure to properly report the absence. The claimant had previously been warned that future absences could result in termination and did have multiple prior unexcused absences. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

#### **DECISION:**

The representative's July 31, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 18, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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