

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA A MULVANEY
Claimant

APPEAL NO: 14A-UI-06646-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 05/18/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 20, 2014 (reference 03) determination that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the July 21 hearing. Stacey Santillan, the Employment Manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 24, 2013. The employer hired the claimant to work as a full-time maintenance mechanic. Employees usually have a 45-day probationary period. On August 5 the employer extended the claimant's probationary period an additional 30 days because of attendance issues and his supervisor believed he needed some more training to increase his competency. The employer advised the claimant that any absence during the probationary period can result in an employee's discharge. The employer advised the claimant to watch his attendance.

During his employment, the claimant did not work on July 22. The claimant called in, but the employer recorded this day as a no-call/no-show incident and initially gave the claimant two attendance points for this day. The claimant was late for work on August 3, 6 and 28. He received a ½ point for each of these incidents. The claimant was late for work on August 21, but he brought the employer a doctor's statement verifying he had been at an appointment. The claimant received ½ point on August 21. On August 28 the claimant was 11-minutes late for work.

On August 28, 2013 the employer discharged the claimant because he had accumulated too many points during his probation. The claimant's termination paperwork indicated he had accumulated four attendance points during his probation. The claimant was late for work after August 5 because he lost track of time doing personal errands before he went to work. While the claimant may have gotten to work on time these days, he did not punch in on time.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). As a probationary employee, the employer held him to a higher attendance standard than a non-probationary employee. After the employer extended the claimant's probation, the claimant was still late for work. When his probation was extended the claimant should have known his job was in jeopardy. Instead of making sure he punched in on time, the claimant was late for work two more times. The claimant was late because he lost track of the time while doing personal errands. The claimant's failure to report to work on time during his probation amounts to work-connected misconduct. As of August 28, 2013 the claimant is not qualified to receive benefits.

DECISION:

The representative's June 20, 2014 (reference 03) determination is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of August 28, 2013 the claimant is disqualified from receiving unemployment insurance benefits. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

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