

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMISON D MADDOX
Claimant

APPEAL NO. 14A-UI-09253-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

**OC: 07/20/14
Claimant: Respondent (3)**

Section 96.5-2-a – Discharge
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 14, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 11, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Stacey Santillan participated in the hearing on behalf of the employer. The parties agreed that the issue of whether the claimant was able to and available for work could be considered at the hearing. A duplicate decision was issued on August 29, 2014, reference 02, regarding the same separation from employment and was appealed by the employer. The parties agreed that Appeal No. 14A-UI-08810-SWT could be consolidated with his appeal for the purpose of hearing and deciding the case.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer as a general laborer from December 16, 2013 to June 3, 2014. After June 3, 2014 the claimant requested time off because his fiancé was suffering from vertigo and needed to be evaluated. The second-shift Human Resource supervisor, Aureliano Diaz, allowed him the time off.

After she was evaluated, the claimant's fiancé was diagnosed with brain cancer and was scheduled for radiation treatment. The claimant contacted Human Resource supervisor Javier Sanchez and explained about his fiancé's medical condition. He told Sanchez that his fiancé would be finishing her radiation treatment on August 7, 2014 and he would be able to return to work at that time. Sanchez told him that he should bring in the medical documentation and the employer would work with him.

When the claimant reported to work around July 17 or 18 with his medical documentation, Sanchez informed him that he was discharged due to missing work without calling in.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 20, 2014. His weekly benefit amount was \$327.00. He filed for and received a total of \$981.00 in unemployment insurance benefits for the weeks between July 20 and August 9, 2014.

The claimant was needed to assist his fiancé's medical appointments up until August 7, 2014 and was not available for work.

After August 7, 2014 the claimant has been available for work. He has been contacting two employers every week. He has arranged for someone to take care of his fiancé if he was offered employment.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The preponderance of the evidence establishes that the employer discharged the claimant around July 17 or 18, 2014. The claimant had requested and was granted time off, but when he brought in his medical documentation he was informed that he was discharged.

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

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).

No willful and substantial misconduct has been proven in this case. The preponderance of the evidence establishes the claimant was granted time off and reasonably believed he did not need to call in each day he missed work.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

The claimant was not available for work from July 20 through August 9, 2014 due to his fiancé's medical conditions. He was available for work effective August 10, 2014. The claimant is required to report any changes in his availability to work—such as if he has no caretaker for his fiancé or is unavailable to work for the majority of the week due to his fiancé's medical issues.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7.

Since the claimant was disqualified due to being unavailable for work from July 20 through August 9, 2014 the claimant was overpaid \$981.00 in unemployment insurance benefits. Although Iowa Code § 96.3-7 contains a provision that would waive an overpayment caused by the employer's failure to participate in the fact-finding interview, that provision does not apply here because the disqualification is based on availability not an issue regarding the separation from employment.

DECISION:

The unemployment insurance decision dated August 14, 2014, reference 01, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits effective August 10, 2014, if he is otherwise eligible. He is ineligible for benefits from July 20 through August 9, 2014. The claimant was overpaid \$981.00 in unemployment insurance benefits.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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