

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DENG M WOL
Claimant

APPEAL NO: 20A-UI-02435-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 02/16/20
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 10, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 30, 2020. The claimant participated in the hearing with CTS Language Link Interpreter Hassan (12322). Vicky Cervantes, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general laborer for Swift Pork Company from February 20, 2019 to February 15, 2020. He was discharged for exceeding the allowed number of attendance points.

The employer uses a point-based attendance policy and an employee receives one point per absence and one point for consecutive days absences if he has a doctor's note. Employees receive a verbal warning upon accumulating five attendance points; a written warning upon accumulating seven attendance points; a final written warning upon accumulating nine attendance points; and are terminated upon reaching ten attendance points.

The claimant was absent April 5 through April 13, 2019, April 29 and May 13, 2019, due to illness and his supervisor signed him off work with permission and no points were issued; he was absent May 24, 2019, due to illness and received one point; he was absent June 10 through June 14, 2019, due to illness, provided a doctor's note and received one point; he was absent June 18 and 19, 2019, due to illness, provided a doctor's note and received one point; he was absent July 2, 2019, due to illness and received one point; he was absent July 3 through July 10, 2019, due to illness, provided a doctor's note and received one point; he was absent August 19, 2019, and his supervisor excused his absence; he was absent September 19 through October 3, 2019, due to illness, provided a doctor's note and received one point; he

was absent October 28 through November 9, 2019, due to illness, provided a doctor's note and received one point; he was absent November 25, 2019, and his supervisor excused his absence; he was absent the month of December 2019, due to illness, provided a doctor's note and received one point; he was absent January 2 through January 20, 2020, due to illness, provided a doctor's note, and received one point; he was absent February 5, 2020, and his supervisor excused his absence; he was a no-call no-show February 6, 2020, and received two points; he was absent February 7, 2020, due to illness and received one point; he was a no-call no-show February 8, 2020, and received two points; he was absent February 10 through February 14, 2020, and received one point for each day; and he was a no-call no-show February 15, 2020, and received two points, and the employer terminated the claimant's employment.

The employer issued the claimant a final written warning January 31, 2020. Due to the claimant's sporadic attendance the employer was unable to issue him a verbal or written warning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant accumulated a large number of absences due to a stomach ailment for which he has since had surgery. Because the final absence was related to properly reported illness as the claimant had a note from the emergency room, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The March 10, 2020, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

May 4, 2020
Decision Dated and Mailed

je/scn