

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL F TOKPA**  
Claimant

**APPEAL NO. 12A-UI-11223-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 12/11/11**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated September 14, 2012, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on October 9, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Aureliano Diaz participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as production worker from October 5, 2009, to August 22, 2012. He was informed and understood that under the employer's work rules, employees were required to notify the employer one-half hour before their shift start if they were not able to work as scheduled and were subject to termination if they had nine or more attendance points.

The claimant was at 7.5 points before August 23 and had been disciplined for his absenteeism. On August 23 and 24 the claimant missed work because he was arrested and jailed for missing a criminal court appearance. He did not properly notify the employer about his absences. Employees received two attendance points for absences without proper notice.

On August 27, 2012, the employer discharged the claimant for excessive absenteeism because he had accumulated 11.5 attendance points.

**REASONING AND CONCLUSIONS OF LAW:**

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

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. 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).

871 IAC 24.32(7) provides:

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.

The claimant was disqualified for excessive unexcused absenteeism. The final absences were not for illness or other reasonable grounds for missing work and were not properly reported. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated September 14, 2012, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw