

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN D PESHEL
Claimant

APPEAL NO. 12A-UI-05299-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 02/05/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 1, 2012 determination (reference 04) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the hearing. Aureliano Diaz appeared on the employer's behalf. Based on the evidence, the parties' arguments 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 in October 2006. The claimant worked as a full-time mechanic. The claimant's attendance issues resulted in the employer giving him a February 28, 2012 "Last Chance Letter." The Last Chance Letter informed the claimant the employer would not discharge him if he agreed he would not have any absences for three months. The Last Chance Letter warned the claimant that if he had an unexcused absence during the next three months he would be discharged.

The claimant completed paperwork and received intermittent FML for his mother's medical issues on March 19, 2012. The employer excused absences covered under FML.

On April 3, 2012, the claimant worked second shift which started at 3:00 p.m. He did not report to work on April 3. When the employer talked to him later that week about the April 3 absence, the claimant said he missed work because he had to take his father to a 1:30 p.m. chiropractor appointment. Since the claimant did not have FML approval for his father, the employer considered the April 3 absence unexcused. On April 6, 2012, the employer discharged the claimant for violating his Last Chance Letter for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive benefits if the employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)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. Exceptions to this rule include illness or other reasonable grounds that an employee was absent and has properly reported the absence to the employer. 871 IAC 24.32(7).

The claimant knew or should have known his job was in jeopardy on February 28 when he received and agreed to the Last Chance Letter. When the employer talked to the claimant the week ending April 7, the claimant told Diaz he did not go to work because he took his father to a chiropractic appointment. At the hearing, the claimant testified he had to go with his mother to a doctor's appointment. Since the claimant did not say anything to the employer in early April that he was absent because he took his mother to a doctor's appointment, the claimant's credibility is questionable. Common sense indicates a person would have told the employer he had been absent because he took his mother to a doctor's appointment.. This absence would have been covered under FML the claimant received for his mother. Also, since the claimant worked second shift, the claimant did not provide any explanation for failing to work part of this shift.

Since the claimant knew his job was in jeopardy, taking his father to a chiropractor's appointment does not amount to an excused absence. The claimant intentionally disregarded the employer's interests by again having an unexcused absence. As of April 8, 2012, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's May 1, 2012 determination (reference 04) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 8, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css