

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J KRAUSE
Claimant

APPEAL NO. 11A-UI-15231-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 10/23/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 16, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 22, 2011. 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 a loader from April 21, 2011, to October 20, 2011. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were deemed to have voluntarily quit employment after three days of absence without notice.

In October 2011, the claimant was informed by a human resource representative that he had too many points and should be terminated. The representative, however, informed the claimant that he would delete some points to allow him to continue to work, but if the claimant was absent again, he would be discharged. The claimant's points were due to illness and were properly reported.

The claimant became very sick at work and left work on October 20, 2011, with permission from a supervisor. The claimant went to the doctor before reporting to work on October 21 and obtained a doctor's excuse. When he reported to work, the human resources representative informed him that despite having a doctor's excuse, he would be receiving an attendance point, and he was discharged for attendance.

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 evidence establishes the claimant was discharged and did not quit. He was discharged for excessive absenteeism, but his absences were due to illness and were properly reported. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated November 16, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css