

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALBERTO GARCIA**  
Claimant

**APPEAL NO. 12A-UI-09538-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK CO**  
Employer

**OC: 06-24-12**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 30, 2012, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on August 30, 2012. The claimant did not participate. The employer did participate through Javier Sanchez, Human Resources Assistant Manager.

**ISSUE:**

Was the claimant discharged due to job-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 production worker full time beginning May 25, 2011 through August 2, 2011 when he was discharged. The employer alleged that the claimant was a probationary employee and was not given any warning about his attendance despite the fact that he missed several days and was tardy on others. The claimant was never warned that his poor attendance was placing his job in jeopardy.

**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 § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employee is entitled to fair warning that his actions are placing his job in jeopardy. Despite the employer's allegation to the contrary, the claimant was past his 45-day probationary period and under their policy was entitled to warnings about his attendance prior to discharge. Without fair warning an employee has no way of knowing that there are behaviors he needed to change to continue his employment. Excessive unexcused absenteeism has not been established. Benefits are allowed.

**DECISION:**

The July 30, 2012 (reference 02) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css