

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SABIR M MAMOR
Claimant

APPEAL NO: 12A-UI-04454-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 03/18/12
Claimant: Appellant (5)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 17, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Aureliano Diaz, the human resource manager, appeared on the employer's behalf. Magdy Salama interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntary quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2009. The claimant worked full time. The last day the claimant worked was December 5.

The claimant called the employer on the attendance line on December 6 through 9. He left messages that on December 6, he was in the hospital with his wife. The claimant's wife was pregnant. When she became ill, his wife's physician told the claimant that his wife should not be left alone. When the claimant left messages that he was unable to work, he reported that he did not know when he would be able to return to work. The claimant and his wife do not have any relatives that could have stayed with claimant's wife. When the claimant called on the attendance line the week of December 5, he indicated he did not know how long he would be gone from work.

The claimant did not call or report to work the week of December 12. The employer's attendance policy informs employees that if they do not call or report to work for three days, the employer considers the employee to have voluntarily quit. The employer no longer considered the claimant an employee as of December 14.

The claimant reported to work on December 20 or 21 with a doctor's note verifying that a physician told him to stay with his wife when she was ill. When the claimant reported to work on December 20 or 21, the employer told him he had already been discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(1), (2)a. Since the claimant returned to work on December 20 or 21, he did not quit his employment. The employer ended his employment on December 14 when the claimant did not call or report to work for three days. For unemployment insurance purposes, the employer discharged the claimant.

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Even though the claimant had a doctor's note excusing him from work, he failed to properly notify the employer the week of December 12 that he was still unable to work. When the claimant failed to call the week of December 12, as he had done the previous week, he intentionally disregarded the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of March 18, 2012, the claimant is not qualified to receive benefits.

DECISION:

The representative's April 17, 2012 determination (reference 01) is modified but the modification has no legal consequence. The claimant did not intend to quit his employment. Instead, the employer discharged him for failing to notify the employer for a week or more that he was unable to work. The claimant committed work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 18, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs