

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATT J SCHAUMBURG
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 19A-UI-07503-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/21/19
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Swift Pork Company (employer) appealed a representative's September 11, 2019, decision (reference 01) that concluded Matt Schaumburg (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 15, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Vicky Cervantes, Human Resources Manager.

The employer offered and Exhibit 1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 10, 2018, as a full-time mechanic. He signed for receipt of the employer's handbook on December 10, 2018. The handbook states that an employee will be terminated if he accumulates ten attendance points within a year.

The claimant was tardy reporting for work on February 8, March 15, 16, May 15, 19, June 7, and 27, 2019. He accumulated four attendance points for tardiness. On March 21, 2019, he properly reported his absence due to personal business and received one attendance point.

The claimant was absent due to medical reasons on February 20, March 6, June 28, and 29, 2019. He provided a doctor's note for his absences on June 28 and 29, 2019. The claimant properly reported all of his medical absences, except for the absence on March 6, 2019. The employer's records did not indicate why the claimant did not report thirty minutes prior to the start of his shift. The employer issued the claimant four attendance points for his medical absences.

On March 29, 2019, June 21, and July 9, 2019, the employer showed the claimant documents called verbal, written, and final written warnings, respectively. With each warning, the employer asked the claimant to sign the document and reviewed his attendance point total. A copy of the document was not given to the claimant.

On July 20, 2019, the claimant properly reported his absence due to sickness. The employer assessed him one attendance point. On July 20, 2019, the claimant's attendance point total was ten. The claimant worked through July 23, 2019. On July 24, 2019, the employer terminated the claimant for having accumulated ten attendance points in violation of the employer's policy.

The claimant filed for unemployment insurance benefits with an effective date of July 21, 2019. The employer participated personally at the fact finding interview on September 10, 2019, by Vicky Cervantes.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred on July 20, 2019. The claimant's absence does not rise to the level of job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's September 11, 2019, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs