

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MACHUL D BOM
Claimant

APPEAL NO. 19A-UI-03981-S1

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 03/03/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Machul Bom (claimant) appealed a representative's May 13, 2019, decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Swift Pork Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for June 14, 2019, in Des Moines, Iowa. The claimant was represented by Mark Sherinian, Attorney at Law, and participated personally. The employer did not appear for the hearing and therefore, did not participate in the hearing. The claimant offered and Exhibits A and B were received into evidence.

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 May 3, 2017, as a full-time meat cutter/wizard knife. He received the employer's handbook during his orientation at the beginning of his employment. He understood that if he accumulated ten attendance points in one year, he could be terminated. The claimant also understood how to properly report his absences.

The employer did not issue the claimant any warnings for attendance. During his employment, the claimant's absences were all due to his own medical issues except for one instance. The claimant's son experienced a seizure and was hospitalized. The claimant properly reported the issue and the employer allowed the claimant three days of absence to care for his child. All the claimant's absences were properly reported.

On or about September 13, 2018, the claimant suffered a work-related injury to his knee. He reported the issue to the employer. He completed a Family Medical Leave (FMLA) request on October 20, 2018, and gave it to the employer's human resources staff. When the pain increased in February 2019, he notified the employer and the employer sent him to their

physician on February 20, 2019. The physician removed him from work through February 21, 2019. The claimant returned to work and performed services from February 22 to 27, 2019.

The physician saw the claimant again on February 28, 2019. The doctor removed him from work through March 7, 2019. The claimant saw the doctor again on March 8, 2019, and the doctor restricted him from working until March 11, 2019. The claimant hand-delivered every doctor's note to the employer's human resources department staff and properly reported each absence.

On March 11, 2019, the claimant returned to the work place and found that his badge did not allow him entry. Security escorted him to the human resources supervisor. He handed the supervisor the doctor's note he received that morning. The supervisor told the claimant he was terminated for accumulating too many attendance points.

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 incidents of absence were properly reported medical issues which occurred in February and March 2019. The claimant's absence does not amount to job misconduct because it was properly reported. The employer did not appear for the hearing and 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. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's May 13, 2019, decision (reference 04) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs