

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANEI J MEL**  
Claimant

**APPEAL NO: 11A-UI-10285-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 06/19/11**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2) - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's June 19, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non disqualifying reasons. The claimant participated in the hearing. Aureliano Diaz, the acting human resource manager, testified on the employer's behalf. Rafael Santos observed the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in July 2010. The employer's attendance policy informs employees they can be discharged once they accumulate nine attendance points in a rolling calendar year. As of April 19, 2011, the employer did not discharge an employee until an employee accumulated ten points, but this had recently been changed to nine points.

The claimant received a written warning on April 19, 2011, because he had accumulated 8.5 points. The claimant called in sick these days: December 6, 8, 10, 2010, January 3, 24, February 14, March 29 and April 18, 2011. He received one point for each of these eight absences. He received a half a point on October 1, 2010, for reporting to work late.

On May 16, 2011, the claimant notified the employer he was ill and unable to work. The claimant received an attendance point for this absence, but no written warning. On June 20, the claimant called the employer to report he was ill and unable to work. When reviewing the attendance logs, the employer did not notice that the claimant had called in. When the claimant reported to work on June 21, the employer discharged him for violating the employer's attendance policy – having excessive absenteeism. As of June 21, the claimant had accumulated 10.5 attendance points.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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).

Although the employer testified the employer's attendance logs did not indicate the claimant had called on June 20, the claimant's testimony that he did is credible. This credibility finding is based on the fact the called nine previous days when he was unable to work as scheduled. Also, the claimant distinctly remembered making the call before his shift started. Even though the claimant violated the employer's attendance policy by accumulating too many points, he received the points for being ill and unable to work as scheduled.

The employer established justifiable business reasons for discharging the claimant, missing too much work, the law specifically states that absences for an illness do not establish an intentional disregard of the employer's interest. The evidence does not establish that claimant did not work when he was healthy and able to work. Therefore, he did not commit work-connected misconduct. As of June 19, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's July 25, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of June 19, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs