

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH W LOGSDON
Claimant

APPEAL NO. 12A-UI-12362-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 09/16/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kenneth Logsdon (claimant) appealed a representative's October 2, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Swift Pork Company (employer) for excessive unexcused absenteeism. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 9, 2012. The claimant participated personally. The employer participated by Javier Sanchez, human resources assistant manager.

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 having considered all of the evidence in the record, finds that: The claimant was hired on November 10, 2011, as a full-time production worker. The claimant signed for receipt of the employer's handbook upon hire and annually. The handbook indicates that employees must report an absence at least thirty minutes in advance of the start of the shift. The employer issued the claimant a written warning on February 28, 2012, for absenteeism. The claimant understood that he would be terminated if he accumulated nine or more attendance points. In 2012, the claimant properly reported four absences due to medical issues. The claimant was tardy for work five times due to oversleeping and lack of transportation.

On September 15, 2012, the claimant was supposed to work from 6:45 a.m. to 3:00 p.m. At 8:10 a.m., on September 15, 2012, the claimant reported he would be absent due to lack of transportation. On September 17, 2012, the employer terminated the claimant for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 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 employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and that the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's October 2, 2012 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw