

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTHONY Z LAKI**  
Claimant

**APPEAL NO. 12A-UI-01036-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 12/18/11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated January 19, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on February 22, 2012. The claimant participated. The employer participated by Mr. Aureliano Diaz, human resource manager.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Anthony Laki was employed by the Swift Pork Company from December 8, 2008, until December 6, 2011, when he was discharged from employment. Mr. Laki worked as a full-time kill floor worker and was paid by the hour.

The claimant was informed by a representative of the company's human resource department that he was being discharged on December 6, 2011. The claimant had been absent the preceding day due to illness and had properly called in to report his impending absence. Because the claimant had exceeded the permissible number of infractions under the company's no-fault attendance policy, he was terminated from employment. Mr. Diaz considered himself to be discharged after being informed of that fact by the company and did not report back to work again.

It is the employer's position that the claimant then began an extended period of absence, followed by a vacation, and subsequently was terminated when he failed to report or provide notification for three consecutive work days on January 3, 4, and 5, 2012.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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(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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The Court held that the absences must be both excessive and unexcused. The Court further held that absence due to illness is deemed excused if the employee properly notifies the employer.

Inasmuch as the evidence in the record establishes the claimant properly notified his employer of his most recent absence due to illness, the administrative law judge concludes the claimant was discharged under non-disqualifying conditions. The claimant was told that he was being

discharged on December 6, 2011, and had no further obligation to report back to work after being terminated. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated January 19, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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