

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN T REUNILLA
Claimant

APPEAL NO. 16A-UI-13811-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 12/04/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Swift Pork Company (employer) appealed a representative's December 19, 2016, decision (reference 01) that concluded John Reunilla (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 20, 2017. The claimant provided a number but he could not be reached and, therefore, did not participate in the hearing. The employer participated by Rogelio Bahena, Human Resources Supervisor. The employer offered and Exhibit 1 was received into evidence. Exhibit D-1 was 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 November 2, 2015, as a full-time belly flange. He previously worked for Cargill. The employer's policies were posted at work after Cargill was purchased by the employer. The claimant did not receive his own copy of the policies. The policy stated an employee will be terminated if he accumulates ten attendance points.

On March 15 and April 1, 2016, the claimant properly reported he was leaving work early. The claimant was absent due to properly reported medical issues on February 8, 9, 10, 17, April 2, 21, 22, and 23, 2016. He provided a doctor's note for three of the absences but was assessed attendance points. On April 25, 2016, the employer issued the claimant a written warning for accumulating six attendance points. The employer notified the claimant that further infractions could result in termination from employment.

On April 26, 2016, the claimant was tardy for work. The claimant was absent due to properly reported medical issues on June 8 and July 27, 2016. On August 1, 2016, the employer issued the claimant a written warning for accumulating 8.5 attendance points. The employer notified the claimant that further infractions could result in termination from employment.

On August 5, 2016, the claimant properly reported he was leaving early. On November 26, 2016, the claimant left work approximately seven minutes early after asking to go to the restroom. The employer terminated the claimant on December 1, 2016, for accumulating ten attendance points.

The claimant filed for unemployment insurance benefits with an effective date of December 4, 2016. The employer participated personally at the fact finding interview on December 16, 2016, by Rogelio Bahena.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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). 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).

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 claimant properly reported absences for medical issues and accumulated six attendance points. Those absences cannot be considered misconduct.

He accumulated four attendance points for leaving work early on four occasions and for being tardy once in a little over eight months. The employer did not keep records of the reasons for the tardiness and leaving early. The employer has not established that the claimant's absences

were excessive. The employer has failed to provide any evidence of willful and deliberate misconduct. The claimant was discharged but there was no misconduct.

DECISION:

The representative's December 19, 2016, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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