

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**STEPHEN J WAKELIN**  
Claimant

**APPEAL NO: 18A-UI-07581-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 06/17/18**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 10, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 3, 2018. The claimant participated in the hearing. Rogelia Bahena, Human Resources Generalist, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Swift Pork Company from November 3, 2014 to June 22, 2018. He was discharged from employment due to a final incident of absenteeism that occurred on June 18, 2018.

The employer has a no-fault point-based attendance policy and employees are terminated upon reaching ten or more points. An employee receives one point for a properly reported absence; one-half point for an incident of tardiness of less than two hours; and two points for an absence that is not properly reported.

The claimant was absent October 21, 2017, and received one point; he was absent and listed the reason as “other” November 15, 2017, and received one point; he was absent and listed FMLA as the reason November 28 and December 2, 2017, but did not complete the required form for either absence and received one point for each date; he was absent due to properly reported illness April 3, 2018, and received one point; he was tardy April 6, 2018, and received one-half of a point; he was absent and cited “personal business” as the reason April 9, 2018, and received one point; he was absent and listed FMLA as the reason April 18, 2018, but did not complete the required form and received one point; he was tardy June 7 and June 8, 2018, and received one-half of a point for each date; and he was absent June 18, and listed FMLA as

the reason and did not properly report his absence. The claimant did complete the FMLA form and one point was removed and the claimant had a total of 10.5 points. The employer terminated the claimant's employment June 22, 2018.

The employer issued the claimant a written warning April 11, 2018, after he accumulated six points and a final written warning May 15, 2018, after he accumulated eight points.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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(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 claimant received three points when he used FMLA but failed to complete the required administrative form for the employer stating the reason for the FMLA and the date on November 28 and December 2, 2017, and April 18, 2018. He was aware of the employer's policy and successfully filled out the forms November 13, 14 and December 4, 2017.

The claimant argues that his June 7 and June 8, 2018, incidents of tardiness should not count because he was actually at his work station on time. The employer has a ten minute rule where it states that it is assumed it takes an employee who does not properly clock in ten minutes to get from the front gate to his work station after going from the gate to the front door, to the supply room to get his gear and then to the locker room before going to his work station. The claimant maintains he did that route faster than ten minutes. The ten minute rule, however, is a uniform rule and must be applied across the board. The employer cannot be made to guess at which employee can complete that route faster than ten minutes and those that cannot. That is why it picked a time it felt was fair to accommodate employees who fail to properly clock in.

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

**DECISION:**

The July 10, 2018, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn