

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY D BROWN
Claimant

APPEAL NO. 11A-UI-15688-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK CO
Employer

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

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Swift, filed an appeal from a decision dated November 30, 2011, reference 01. The decision allowed benefits to the claimant, Gregory Brown. After due notice was issued, a hearing was held by telephone conference call on January 11, 2012. The claimant participated on his own behalf. The employer participated by Human Resources Manager Aureliano Diaz.

ISSUE:

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

FINDINGS OF FACT:

Gregory Brown was employed by Swift from December 20, 2010 until November 3, 2011 as a full-time dock employee. He received written warnings regarding attendance on July 29, 2011, when he had accumulated five points, and on September 28, 2011, when he had accumulated eight points. The company policy calls for discharge at nine points.

Mr. Brown was absent on November 1, 2011, because that was a day off. The collective bargaining unit calls for a day off after an employee works 21 days straight. He did not call in, because he believed he was not scheduled that day. On November 2, 2011, he called in absent due to illness. The employer considered it a no-call/no-show; but, even if the claimant had called in, he would have accumulated more than nine points. He was discharged on November 3, 2011, by Human Resources Manager Aureliano Diaz. .

REASONING AND CONCLUSIONS OF LAW:

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.

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 majority of the claimant's absences were due to personal illness and were properly reported. That was the case on November 2, 2011, when he was absent. Mr. Brown asserted he did call in and the employer did not present any substantial rebuttal evidence. A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for absences that were properly reported and due to illness. There is no misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of November 30, 2011, reference 01, is affirmed. Gregory Brown is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw