

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOMINIQUE CLARK

Claimant

APPEAL NO: 12A-UI-00130-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 04-03-11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 27, 2011, reference 09, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 9, 2012. The claimant participated in the hearing. Aureliano Diaz, human resources manager, 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 April 18, 2011 to November 30, 2011. The employer uses a no-fault attendance policy and employees are terminated upon reaching nine points within a rolling calendar year. The claimant was absent due to properly reported illnesses June 9, June 27, July 26, August 23, September 12, September 17, and October 4, 2011, and was assessed one point for each absence. He was absent October 14, 2011, because his daughter broke her arm and he received one point for that absence. The claimant was tardy November 2, 2011, and received one-half point. At that time, he had eight and one-half points because he was listed as tardy September 19, 2011, but the employer later dropped that one-half point. He was listed as a no-call, no-show November 26, 2011, and received two points. The claimant disputes that he did not call in but would have received one point regardless and that point would have exceeded the employer's allowed number of attendance points. The employer terminated the claimant's employment for violating its attendance policy November 30, 2011. The employer's policy states employees will receive a written warning when they accumulate five points and again when they reach eight points. The claimant did not receive a five-point warning, but did receive a written warning October 27, 2011, because he had eight and one-half points. The claimant provided doctor's excuses for his absences August 23 and November 26, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant's points were all accumulated due to illnesses that were properly reported. Because the final absence was related to properly reported illness, accompanied by a doctor's excuse, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The December 27, 2011, reference 09, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw