

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WYATT GUTHRIE
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A-UI-05039-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/06/20
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Wyatt Guthrie (claimant) appealed an Iowa Workforce Development February 8, 2021, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Swift Pork Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 16, 2021. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

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 worked for the employer from September 9, 2019, through November 30, 2020. On or about September 1, 2020, he became a member of management as a full-time supervisor. The employer did not have a handbook for management positions. The claimant worked a variety of shifts and some Saturdays. The employer did not issue him any warnings after hiring him as a supervisor.

The claimant did not work from November 9, 2020, through November 17, 2020, because he tested positive for Covid-19. On November 20, 2020, the claimant requested and was granted a vacation day. On November 21, 23, 24, 25, and 27, 2020, the claimant properly reported to his supervisor that he was unable to work due to medication changes or illness. His physician faxed the employer a doctor's note indicating he was excused from work for November 23, 24, and 25, 2020. The employer would not confirm it received the note.

The claimant continued to text his direct supervisor daily but his supervisor stopped responding. The claimant did not know whether he was scheduled to work on Saturday, November 28, 2020. He contacted the temporary human resources person. On November 28, 2020, the claimant

said he was ready to return to work. The human resources person told the claimant to meet with her on Monday, November 30, 2020, at 8:45 a.m.

On Monday, November 30, 2020, the human resources person and the claimant's direct supervisor told the claimant he was terminated for no call, no show. The employer did not provide a written document to the claimant indicating the no call, no show policy or the date(s) of no call, no show.

The claimant filed for unemployment insurance benefits with an effective date of December 6, 2020. His weekly benefit amount was determined to be \$493.00. The claimant received benefits of \$493.00 per week from December 6, 2020, to the week ending January 3, 2021. This is a total of \$3,944.00 in state unemployment insurance benefits after December 6, 2020. He also received Federal Pandemic Unemployment Compensation.

REASONING AND CONCLUSIONS OF LAW:

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(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

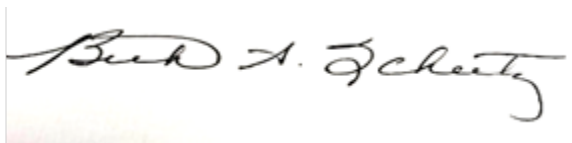
Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incidents of absence were properly reported illness. The claimant's absence does not amount to job misconduct because it was properly reported. The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's February 8, 2021, decision (reference 02) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

April 21, 2021
Decision Dated and Mailed

bas/kmj