

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUNO FERNANDEZ
Claimant

APPEAL NO. 11A-UI-14108-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 10/17/11
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 17, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 21, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistant of an interpreter, Anna Pottebaum. Aureliano Diaz participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant was employed by the employer from October 24, 2007, to September 13, 2011. He was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after three days of absence without notifying the employer.

The claimant had been was on a leave of absence from the employer. The claimant reported to the office on September 2, 2011, to get information about the short-term disability program. A supervisor instructed the claimant that he needed to call in each day he was absent or he would be terminated.

The claimant was absent from work without calling the employer on September 6, 7 and 8, 2011. As a result, his employment was terminated on September 13, 2011.

The claimant filed for and received a total of \$3,465.00 in unemployment insurance benefits for the weeks between September 11 and November 26, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

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 claimant was absent from work without proper notice on September 6, 7 and 8, 2011. He had just been warned that he could be discharged for being absent without calling in. He was discharged on September 13, 2011, for work-connected misconduct. He is subject to disqualification effective September 11. Although the claimant received benefits effective August 18, the employer's appeal was based on his termination on September 13 and the disqualification is imposed as of that date.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated October 17, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits effective September 11, 2011, and continuing until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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