

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MANUEL FUJARTE**  
Claimant

**APPEAL NO. 13A-UI-12917-L**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK CO**  
Employer

**OC: 10/20/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 13, 2013, (reference 02) decision that denied benefits because of a discharge from employment. After due notice was issued, a hearing was held on January 28, 2014, in Waterloo, Iowa. Claimant participated. Employer participated through interim human resource manager, Aureliano Diaz.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time third shift distribution center (DC) worker from October 22, 2012, through October 23, 2013. He was a no-call/no-show on October 22 (car problems and his phone was disconnected). He had been warned in writing on January 24, 2013, about attendance points. He was also absent on December 5, 2012 (illness); December 13 (tardy); December 15 (personal business); December 23 (tardy); January 5, 2013 (illness); January 21 (no-call/no-show); June 15 (tardy); and October 19 (tardy, low tire pressure). Claimant was required to clock in at 10:45 p.m. for a daily safety meeting in advance of his 11:00 p.m. shift start time but thinks he only got paid from 11:00 p.m. to 7:00 a.m. (Mr. Diaz said he would verify whether or not claimant was paid for the safety meeting time. If he was not or if there is a dispute, the issue may be addressed by the wage and hour IWD Division of Labor Services at 1-800-JOB-IOWA or <http://www.iowaworkforce.org/labor/wage.htm>.) He also believed at times he was tardy because there were so many people clocking in at five minutes before the start time that it was difficult to get clocked in on time. There is one electronic time clock for the DC where 20 to 30 people work per shift. The electronic card swipe takes seconds per person. He did not ask Diaz for a shift change.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The employer has credibly established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The November 13, 2013, (reference 02) decision is affirmed. 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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