

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEREJILDO NAVAREZ
Claimant

APPEAL NO: 13A-UI-00211-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 12/02/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 31, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. A hearing was started on February 8, 2013. When the claimant's cell phone became disconnected because he was traveling, the hearing was rescheduled to February 18, 2013.

The claimant participated at the February 18 hearing. Javier Sanchez, the human resource assistant manager, appeared on the employer's behalf. Ike Rocha interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 1993. He worked full time. The employer's written attendance policy informs employees that if an employee accumulates nine unexcused attendance points in a rolling calendar year, the employer will discharge the employee for violating the attendance policy. The policy is a no-fault policy, which means if an employee is ill and unable to work, one attendance point is assessed for missing a scheduled day of work if the employee properly notifies the employer he is unable to work. The claimant received a copy of this attendance policy on March 13, 2012.

After the claimant received the attendance policy he was absent the following days:

| Date | Points Assessed | Reason |
|--------------|-----------------|------------------|
| March 19 | 1 | personal illness |
| March 20 | 2 | no-call, no show |
| March 21 | 2 | no-call, no-show |
| May 30 | 1 | personal illness |
| September 10 | 1 | personal illness |
| November 3 | 1 | personal illness |
| November 25 | 1 | personal illness |
| November 28 | 2 | no-call, no-show |

When the claimant returned to work on November 29, the employer discharged him for accumulating nine attendance points as of November 25, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

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. 871 IAC 24.32(8).

The employer testified that when the claimant was absent on November 25, he had accumulated nine attendance points. Even if the claimant had reported to work on November 28, the employer would have discharged him because he accumulated his ninth attendance point on November 25, 2012.

The facts establish the majority of the claimant's absences occurred because the claimant was ill and unable to work. Even though someone had reported the claimant was in jail on March 20 and 21, the claimant denied he had been in jail in March. Since the employer did not discharge the claimant for being in jail, the reason the claimant was not at work on March 20 and 21 is not a crucial fact in this case.

Over half of the claimant's attendance points occurred when he had been ill and unable to work. The ninth attendance point occurred when the claimant was ill and unable to work. Since the claimant properly reported the most recent absence and the majority of his absences, he did not commit work-connected misconduct. As of December 2, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's December 31, 2012 determination (reference 01) is reversed. The employer had justifiable business reasons for discharging the claimant because he violated the attendance policy by accumulating nine attendance points. The claimant did not commit work-connected misconduct. As of December 2, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css