

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

NDABAGIRIYE RENOVAT
Claimant

APPEAL NO: 18A-UI-05619-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 04/22/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 17, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 7, 2018. The claimant participated in the hearing with CTS Language Link Interpreter Augustine (22534). Emily Pottorf, Assistant Human Resource 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 general laborer for Swift Pork Company from September 3, 2014 to April 16, 2018. He was discharged for exceeding the allowed number of attendance points.

The employer uses a no-fault point based attendance policy over a rolling calendar year. An employee receives one point for a full day absence if he calls the employer to report his absence at least 30 minutes prior to the start of his shift; he receives two points if he fails to call at least 30 minutes prior to the beginning of his shift; he receives one-half point if he is less than four hours tardy and one point if he is more than four hours tardy. Employees are terminated upon reaching nine attendance points.

The claimant was absent due to illness June 3, 2017, and received one point; he was absent due to a sick family member September 29, 2017, and received one point; he was absent due to illness October 25, 2017, and received one point; he was absent due to illness November 1, 2017, and received one point; he left early November 6, 2017, and received one-half point; he was absent due to illness November 10, 2017, and received one point; he was a no-call/no-show February 1, 2018, and received two points; he was tardy March 30, 2018, and received one-half point; he was absent due to car problems April 10, 2018, and received one point; and was absent due to illness April 14, 2018, and received one point and his employment was terminated April 16, 2018, for accumulating ten attendance points.

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, 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(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 standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

Six of the claimant's ten points, including the final absence, were due to properly reported illness. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The May 17, 2018, reference 01, decision is reversed. 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/scn