

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE L NAPOLES**

Claimant

**APPEAL NO. 12A-UI-03162-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 02/12/12**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a fact-finder's decision that was dated March 20, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on April 12, 2012. Claimant participated. The employer participated by Mr. Aurelano Diaz, Human Resource Manager.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Jose Napoles was employed by the captioned employer from November 15, 2010 until February 8, 2012 when he was discharged for exceeding the permissible number of attendance infractions under company policy. Mr. Napoles was employed as a full-time loading dock employee and was paid by the hour. His immediate supervisor was Jorge Guido.

The claimant was discharged when the employer believed that Mr. Napoles had not reported for work on February 7, 2012 and had not obtained permission nor had provided notification prior to the date of his absence. The claimant's final attendance infraction caused him to exceed the permissible number of attendance infraction points allowed under company policy and the claimant was discharged.

Prior to being absent on February 7, 2012 the claimant had secured the specific permission of his immediate supervisor, Mr. Guido, to be absent on February 7, 2012. The claimant relied on Mr. Guido's representation that he would inform the company's human resource department. Mr. Napoles had followed that procedure in the past and his obtaining permission from his immediate supervisor to be absent had not been challenged by the company prior to February 8, 2012.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 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(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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in a disqualification. If the employer fails to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The Supreme Court of the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is one form of job misconduct. The Court held that the absences must be both excessive and unexcused.

The court further held that absence due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer.

The evidence in the record establishes that Mr. Napoles sought and obtained permission from his immediate supervisor prior to being absent on February 7, 2012. The claimant relied upon his supervisor's representations that the matter had been taken care of and that the authorization to be absent would be reported to the company's human resource department. The administrative law judge finds the claimant to be credible in his testimony and finds that his testimony is not inherently improbable. As the claimant reasonably believed that he had obtained advance permission to be absent he had no obligation to again call the employer to report his impending absence on the day in question. Unemployment insurance benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated March 20, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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