

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HENRY J SEILER**  
Claimant

**APPEAL NO. 12A-UI-00989-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 12/04/11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Swift Pork Company filed a timely appeal from a representative's decision dated January 19, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 22, 2012. The claimant participated personally. Participating as a witness for the claimant was Deanna Seiler, the claimant's wife. The employer participated by Mr. Aureliano 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: Henry Seiler was employed by Swift Port Company from September 20, 2010 until September 1, 2011 when he was discharged from employment for failing to report or provide notification to the employer as required by company policy.

Mr. Seiler had been injured at work on the night of August 29, 2011 and had been sent home because of his injury. The following day, August 30, 2011, the claimant reported to work but indicated that he was unable to work due to back pain and was sent home by a company representative in the nurse's department. On August 31, the claimant was contacted in the early morning by a different individual with the company's medical department and was asked why he had not completed his shift the preceding night. Mr. Seiler explained and was summoned to a doctor's appointment with a company doctor. The claimant was transported by Swift Pork Company to the doctor's appointment that day and returned, however, the claimant could not work that night due to ongoing back pain. The following day Mr. Seiler went to his personal physician about a non-related work problem. At that time his doctor determined that the claimant's insurance through the company had been "cancelled" leaving the claimant to conclude that he had been discharged from employment. Although the claimant attempted to contact the company's human resource department repeatedly, he was unable to make contact and his calls were unanswered.

## 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. 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 does not furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the evidence shows that Swift Pork Company made a decision to terminate Mr. Seiler based upon the perception that the claimant had failed to report to work for three consecutive workdays and had not provided any notification to the employer regarding his impending absences. Under company policy individuals who do not report for three consecutive workdays and who do not provide notification are considered to have voluntarily quit their

employment. Based upon the company records available the employer concluded that Mr. Seiler had not followed the policy and had quit.

The evidence in the record, however, establishes that the claimant did report to work on two of the three days alleged by the employer as no-call/no-shows. The claimant had attempted to come to work but was unable to stay due to pain related to an on-the-job back injury and was sent home. The claimant also reported to work when summoned by the company's medical department and attended a medical appointment with the company doctor. The administrative law judge concludes that the claimant did provide reasonable notice to the employer on those days that he was unable to work or continue working. It appears that Mr. Seiler may not have called in on the third day because medication taken for pain caused him to be too drowsy to call in as required. Prior to the beginning of the next shift, however, the claimant reasonably concluded that he had been discharged from employment when company insurance had been canceled by the employer. Although the claimant had no obligation to contact the employer to report for work thereafter, the claimant made several attempts to confirm his discharge but was unable to reach the company's human resource department.

While the decision to separate Mr. Seiler from his employment may have been a sound decision from a management viewpoint, the evidence in the record does not establish sufficient intentional misconduct on the part of the claimant to warrant a disqualification from unemployment insurance benefits. Benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated January 19, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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