

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACK L REEVES
Claimant

APPEAL NO. 13A-UI-05120-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

**OC: 03/31/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated April 17, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on June 5, 2013. The claimant participated. The employer participated by Mr. Luis Maza, Human Resource Supervisor. Employer's Exhibits A, B, C, D, E, F and G were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Jack Reeves was employed by Swift Pork Company from March 15, 2010 until March 29, 2013 when he was discharged "for job abandonment." Mr. Reeves was employed full time and last worked as a hog scaler. Mr. Reeves was assigned to work the company's third shift from 9:00 p.m. to 5:30 a.m. and was paid by the hour. His immediate supervisor was Scott Doran.

Mr. Reeves was discharged based upon the employer's belief that the claimant had abandoned his employment by walking off the job without the direct authorization of his supervisor on March 20, 2013.

Mr. Reeves had called in ill for the evening of March 19, 2013 because he was suffering from flu symptoms. Mr. Reeves reported to work the following night March 20, 2013, although he was still not feeling well. After arriving to work that night Mr. Reeves was called to a meeting where his progress on a performance improvement plan was evaluated. Mr. Reeves was dissatisfied with some of the results on the evaluation and voiced some dissatisfaction in the presence of other employees.

At approximately 11:00 p.m. that night Mr. Reeves' flu symptoms increased and he requested permission from a supervisor, Jared Denny, for permission to leave work early. When

Mr. Denny did not object, Mr. Reeves then punched out per company policy and went home. The following day Mr. Reeves again called in sick as he continued to be ill with the flu.

The claimant had not requested permission from his direct supervisor to leave early on the night of March 20, 2013 because his supervisor was in a different work location at the employer's facility and could not be reached by Mr. Reeves at the time. When Mr. Reeves attempted to report to work on March 22 he was informed that he was being suspended because the circumstances of his leaving were being investigated. During the investigation a number of individuals questioned stated that Mr. Reeves had stated that he was going home sick in their presence. Mr. Jared Denny, however, in his statement stated that he had tried to give the claimant "positive reinforcement" and told the claimant to "just hang in there." (See Employer's Exhibit D). During the investigation Mr. Reeves repeatedly was consistent in his statements that it was his belief that he had been given permission to leave early by Mr. Denny.

Because the employer concluded that Mr. Reeves may have left because of dissatisfaction with his recent performance improvement plan evaluation, the employer categorized the claimant's leaving as "job abandonment" and Mr. Reeves was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant 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 benefits. An employer may discharge an employee for any number of reasons or no reason at all but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984).

In the case at hand, the evidence shows that Mr. Reeves had called in sick the previous night because he was ill with the flu. The evidence also shows that Mr. Reeves had stated in the presence of numerous other employees on the night of March 20, 2013 that he continued to be ill with flu symptoms and needed to leave work early for that reason. The claimant testified that he was unable to secure direct permission from his supervisor because the supervisor was not at the work location where Mr. Reeves worked and Mr. Reeves could not summon him at the time. It is also noted that the evidence establishes that Mr. Reeves did contact Jared Denny and cited illness to Mr. Denny as his reason for wanting to leave early. The claimant did not leave the workplace in an angry way but instead followed the usual procedure of punching out and then followed the procedure of calling in prior to his work shift the next day to report that he continued to be ill. The claimant testified that it was not his intention to abandon his job and that's why he attempted to secure permission and made it clear before leaving that he was leaving because of illness.

While the employer's decision to terminate Mr. Reeves may have been a sound decision from a management viewpoint, the administrative law judge concludes based upon the totality of the evidence in the record that the claimant's intention was not to abandon his job or to violate company policy. Claimant attempted to the best of his ability to notify the company of his need to be absent for medical reasons. The administrative law judge concludes that Mr. Reeves provided the best notification that he could under the circumstances and was absent from the remainder of the work shift because he was ill, an excusable absence. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 17, 2013, reference 01, is affirmed. Claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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