

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN A BORSCH**

Claimant

**APPEAL NO. 13A-UI-13357-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 12/02/12**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated December 5, 2013, reference 04, that held he was discharged for excessive unexcused absenteeism and tardiness on November 11, 2013, and benefits are denied. A hearing was held on December 23, 2013. The claimant participated. Luis Meza, HR Supervisor, participated for the employer.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on May 4, 2009 and last worked as a full-time mechanic on November 11, 2013. The claimant received the employer attendance policy that provides a point system for attendance issues. An employer who reaches nine point is subject to termination.

Claimant had accumulated some points due to reported illness, but the employer does not accept a doctor excuse, so points are given.

Claimant's girlfriend was in the hospital, so he called his supervisor to see if he could miss work. It was okayed subject to claimant bringing in her hospital discharge. When claimant brought it in, he was awarded a point and terminated for being over the limit.

## **REASONING AND CONCLUSIONS OF LAW:**

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(8) provides:

(8) Past acts of misconduct. 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(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.

The administrative law judge concludes employer failed to establish misconduct and a current act of misconduct claimant's discharge on November 11, 2013, for excessive "unexcused" absenteeism. The most recent attendance issue must be an act of misconduct.

Since the employer did not participate, claimant's testimony he accumulated points for calling in absences due to illness is not refuted. These absences are for excusable reasons and not misconduct. The most recent absence was approved on a condition claimant met when he brought in his girlfriend's hospital discharge statement. The employer did not accept it, and claimant pointed-out. This is not a current act of misconduct. Job disqualifying misconduct is not established.

**DECISION:**

The decision of the representative dated December 5, 2013, reference 04, is reversed. The claimant was not discharged for misconduct in connection with employment on November 11, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/pjs