

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN A HARTWIG
Claimant

SWIFT PORK CO
Employer

APPEAL 17A-UI-10261-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/17/17
Claimant: Appellant (5)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 5, 2017, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on October 24, 2017. Claimant participated. Employer participated through human resource manager Nicholas Aguirre. Employer's Exhibit 1 (pages 2 – 12) was received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time mechanic on third shift from June 12, 2017, through September 8, 2017. His last day of work was September 7, 2017. He left work without permission sometime after 1:00 a.m. Claimant text messaged his supervisor Austin Reed saying he had smoked some marijuana and did not feel comfortable working. He also told Roberta Savage in payroll the morning of September 7, that he wanted "to leave due to being under the influence." He told her he thought he was going to be fired because of his absence over the last weekend so "used some drugs and felt he could not work." (Employer's Exhibit 1 p. 5) He did not communicate or report thereafter. After having been tardy by seven hours on September 5 and a no-call/no-show on September 6, the employer called him in for a meeting later on September 6, 2017, to issue a written last chance agreement because of his attendance. (Employer's Exhibit 1 p. 7) He had also reported an absence late on July 20, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily quit the employment without good cause attributable to employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

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.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Claimant argued that he left early because he felt threatened by a mechanic Jared Smith, who is his former spouse's cousin. Smith also parents a child with claimant's sister. He alleged Smith has anger issues with claimant because of the custody battle and threatened claimant on the kill floor at shift change saying that he could have someone make it look like an accident. Claimant's version of events is not believable since he did not relay this information to Reed or manager Mike Frye and did not call the police then or later. Savage's contemporaneous email about the reason claimant gave her for leaving is credible. Since claimant had been given a last chance warning about attendance the day before, his failure belief he had been fired was reasonable. His leaving due to being under the influence was not an excusable reason for the absence. That absence in violation of the last chance agreement, coupled with his history of excessive, unexcused absenteeism and tardiness, is considered disqualifying misconduct. Because the employer did not discharge him because of the admission of being under the influence of an illegal substance at work, it is not addressed here.

DECISION:

The October 5, 2017, (reference 01) decision is modified without change in effect. Claimant did not quit but was discharged for reasons related to job misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs