

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NURUDIN S AHMED
Claimant

APPEAL NO: 13A-UI-04611-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 03/17/13
Claimant: Respondent (1)

Iowa Code § 96.5(2) a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 5, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Luis Meza, a Human Resource Supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2011. The claimant worked full time. When the claimant started working, he received information about the employer's attendance policy. The policy informs employees they will be discharged if they accumulate nine attendance occurrences in a rolling calendar year. During an annual meeting on March 3, 2012, the claimant received a copy of the employer's attendance policy.

On October 1, 2012, the claimant received a warning that he had accumulated eight attendance points. On December 3, he notified the employer he was ill and unable to work. When the employer reviewed the claimant's points, a correction was made so the claimant only receives one attendance point instead of two on September 24, 2012. This meant the claimant had eight attendance points as of December 3, 2012. With the exception of August 13, leaving work early one day and a personal illness business on September 24, the claimant reported he was ill and unable to work on the days he received points.

On February 11, 2013, the claimant notified the employer he was ill and unable to work. The claimant had headaches, stomachaches and was unable to sleep. When the claimant went to his physician, he learned his medical issues were the result of stress. When the claimant reported to work on February 12, 2013, the employer discharged him because he had accumulated nine attendance points in a rolling calendar year.

About a month after the claimant had been discharged, he submitted FMLA paperwork to excuse the absences he had for personal illness. The claimant had not requested FMLA before he was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer discharged the claimant in accordance with its attendance policy. Therefore, the employer had justifiable business reasons for discharging the claimant. Since the claimant notified the employer when he was unable to work and the majority of his absences occurred because he was ill, the claimant established reasonable grounds for being absent. He did not commit work-connected misconduct. As of March 17, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's April 5, 2013 determination (reference 01) is affirmed. The employer discharged him for business reasons, but the claimant did not commit work-connected misconduct. As of March 17, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll