

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KESI JOSEPH
Claimant

APPEAL NO: 18A-UI-04075-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 02/25/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 29, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 26, 2018. The claimant participated in the hearing with CTS Language Link Interpreters Molena (23126) and Tarao (10637). Chelsee Cornelius, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Swift Pork Company from January 7, 2015 to March 5, 2018. The claimant was on FMLA from January 11 through February 9, 2018. He believed his doctor extended his FMLA until March 23, 2018, and told the employer his doctor was going to extend his FMLA but if the doctor did grant him additional time to recover from surgery, the employer did not receive the paperwork. The employer considered the claimant a no-call/no-show February 26, 27 and 28, 2018, and terminated his employment effective March 5, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant had surgery January 12, 2018, and the doctor told him he was excusing him from work for ten weeks which would have been March 23, 2018. The employer never received the paperwork, however, and eventually terminated the claimant's employment for attendance. The claimant was still recovering from surgery and reasonably believed his absence was covered by FMLA until March 23, 2018. Under these circumstances, the administrative law judge cannot conclude the claimant engaged in intentional job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The March 29, 2018, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn