

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GRACE V SWANK-DAVIS
Claimant

APPEAL NO. 08A-UI-05573-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS
Employer

**OC: 01/13/08 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Grace Swank-Davis filed an appeal from a representative's decision dated June 2, 2008, reference 01, which denied benefits based on her separation from West Liberty Foods. After due notice was issued, a hearing was held on August 4, 2008 on Burlington, Iowa. Ms. Swank-Davis participated personally. The employer participated by Jean Spiesz, Human Resources Manager. Exhibit One was admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Swank-Davis was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Swank-Davis began working for West Liberty Foods on August 28, 2006 and was last employed full time as a boxer. Her last day at work was May 5, 2008. She was then absent May 6, 7, 8, and 9 because she did not have transportation. All of the absences were properly reported.

Ms. Swank-Davis' transportation issue arose because of problems with her vehicle. She was told the problem was either the battery or the alternator. The car was repaired at least twice but she continued to experience problems. The absences commencing May 6 caused her to exceed the allowable number of attendance points and, therefore, she was notified of her discharge on May 12, 2008. She had been warned in writing about her attendance on December 6, 2006, and February 21 and November 26, 2007. She received a verbal warning about attendance on April 28, 2008. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321

N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Absences caused by matters of purely personal responsibility, such as transportation, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). As such, Ms. Swank-Davis' absences of May 6, 7, 8, and 9 are all unexcused. She had just received a verbal warning about her attendance on April 28, 2008. Therefore, she knew or should have known that continued attendance infractions could result in her discharge. After the warning, she accumulated four consecutive unexcused absences beginning May 6. The administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. As such, it is concluded that disqualifying misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated June 2, 2008, reference 01, is hereby affirmed. Ms. Swank-Davis was discharged for misconduct in connection with her employment with West Liberty Foods. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css