

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MARIA P OJEDA
1501 WOODBURY ST
MARSHALLTOWN IA 50158

SWIFT & COMPANY
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04O-UI-02664-CT
OC: 12/07/03 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Maria Ojeda filed an appeal from a representative's decision dated January 9, 2004, reference 01, which denied benefits based on her separation from Swift & Company. Pursuant to the appeal, a hearing was held on February 11, 2004. The February 13, 2004 decision of the administrative law judge affirmed the disqualification and Ms. Ojeda appealed. The Employment Appeal Board, on March 5, 2004, remanded the matter for a new hearing on the basis that Ms. Ojeda had been denied due process of law.

Pursuant to the remand order, due notice was issued scheduling a hearing to be held by telephone on April 5, 2004. Ms. Ojeda participated personally. The employer participated by Jeremy Cook. Guadalupe McCarney participated as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Ojeda was employed by Swift from September 29, 1998 until December 1, 2003. She worked full time in production. She was discharged because of unreported absences.

Ms. Ojeda was absent without calling in on April 19 and April 21, 2003. She was absent because she went to Chicago to visit her daughter. She could have notified the employer of her intended absences. As a result of the two unreported absences, she received a written warning. Ms. Ojeda was scheduled to go on vacation beginning November 17, 2003. She did not report for work on November 15 or notify the employer of her intentions. She had a doctor's appointment that day but could have contacted the employer to report the absence. When she returned to work on December 1, she was discharged.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Ojeda was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Ojeda was discharged for not reporting three absences. She had no good reason for not notifying the employer that she would be absent on April 19 and April 21. She was clearly on notice after that point that unreported absences were against the employer's rules and might result in her discharge. In spite of the prior warning of April 22, Ms. Ojeda still failed to report her absence of November 15. The evidence does not establish any good reason for the failure to call the employer on November 15.

An employer cannot adequately cover its production needs if there is no notice that employees are going to be absent. The failure to properly and timely report absences is clearly contrary to the employer's standards and interests. Ms. Ojeda had been warned about such conduct but still failed to report her final absence. For the reasons cited herein, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated January 9, 2004, reference 01, is hereby affirmed. Ms. Ojeda was discharged for misconduct in connection with her employment. 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.

cfc/kjf