

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA PROCTOR

Claimant

APPEAL NO: 13O-UI-01635-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 10/21/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated November 8, 2012, reference 01, that held the claimant was not discharged for misconduct on June 16, 2012, and benefits are allowed. A telephone hearing was held on March 12, 2013. The claimant participated. Javier Sanchez, HR Assistant Manager, participated for the employer. The EAB remanded this matter for a new hearing.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record finds: The claimant began employment on February 18, 2003, and last worked for the employer on June 16, 2012. She received the employer attendance policies in an employee handbook. Although she knew it was a requirement to call in an absence from work, she did not believe it necessary while off work due to a worker's compensation injury.

Claimant had shoulder surgery in November 2011 due to a worker's compensation injury. She was off work and under doctor restrictions. In June 2012 she had issues with doing her labor job and an employer medical department representative went with her to a doctor's appointment on June 5.

The doctor imposed work restrictions as to range of motion and lifting. The employer allowed claimant to bid on a janitor job that she won and continued to work through June 16. A supervisor notified claimant she was being moved back to her labor job and she objected due to the restrictions. The medical department sent claimant home so she would not violate her restrictions. On July 5 the employer terminated claimant as a voluntary quit for being a no-call/no-show to work on July 2, 3 and 5 in violation of report to work policy. Claimant did not believe she needed to call do to being under doctor's care for a work-related injury.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on July 5, 2012.

The employer act of sending claimant home on June 16 is a suspension from employment. There was no medical leave granted claimant due to her inability to work a former labor job due to doctor imposed work restrictions. She was no longer under any obligation to report an absence from work until the employer called her back to work. The employer termination on July 5 is for no act of misconduct.

DECISION:

The department decision dated November 8, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on July 5, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css