

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RENE SANCHEZ**  
Claimant

**APPEAL NO. 12A-UI-14521-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 11/11/12  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Rene Sanchez, filed an appeal from a decision dated December 5, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 15, 2013. The claimant participated on his own behalf and Ike Rocha acted as interpreter. The employer, Swift, participated by Assistant Human Resources Manager Javier Sanchez.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Rene Sanchez was employed by Swift from December 11, 2006 until November 14, 2012 as a full-time production worker. He had received the employee handbook in Spanish March 28, 2012. It contains the attendance policy which requires employees to report any absences at least 30 minutes before the start of the shift. It also states employees who accumulate nine attendance points are subject to discharge.

Mr. Sanchez was no-call/no-show to work on February 11, 2012, because his son took his phone and he could not call in. On July 7 and October 1, 2012, he was absent because he was visiting family in another state but not due to any emergencies. On July 30, 2012, he was ill and on November 3 and 11, 2012, he was no-call/no-show. The last two no-call/no-shows were due to oversleeping. He was discharged by Assistant Human Resources Manager Javier Sanchez on November 14, 2012, because he had reached nine points.

**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.

871 IAC 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.

The claimant was discharged for excessive, unexcused absenteeism. Only one of the absences was due to illness but all the others were due to personal business or failure to call and report in a timely manner. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

**DECISION:**

The representative's decision of December 5, 2012, reference 01, is affirmed. Rene Sanchez is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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