

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARACELI GARCIA
Claimant

APPEAL NO. 10A-UI-04920-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 02/21/10
Claimant: Appellant (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Araceli Garcia filed a timely appeal from the March 22, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 14, 2010. Ms. Garcia participated. Joe Nevel, Training Manager, represented the employer. Spanish-English interpreter Ike Rocha assisted with the hearing. Exhibits One and Two were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Araceli Garcia was employed by JBS as a full-time production worker from 2001 until February 22, 2010, when Tony Luse, Employment Manager, discharged her from the employment for submitting an altered doctor excuse to the employer. Ms. Garcia was absent from work on February 16 and 17. Ms. Garcia saw a doctor on February 16, and the doctor provided her a note that excused her absence on February 16 and released her to return to work on February 17. Ms. Garcia altered the return to work date so that it said she was to return to work on February 18. Ms. Garcia's intention was to mislead the employer into believing a doctor had excused her from work on February 17 so that she could avoid incurring additional attendance points under the employer's attendance policy. Ms. Garcia continued to be absent from work and returned to work on Monday, February 22, 2010. Ms. Garcia obtained a second note from her doctor that covered her absence on February 19. Ms. Garcia provided both notes to the employer.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Ms. Garcia concedes that she altered the doctor's note and the evidence indicates the same. Ms. Garcia asserts she did not know such conduct was wrong or could lead to discipline or loss of employment. The administrative law judge finds those assertions not credible. The doctor note was both a medical record and a legal document. Ms. Garcia's intention was to deliberately mislead the employer in order to gain advantage under the attendance system. The employer is entitled to expect that medical documents submitted by employees are as they appeared when they were issued by the medical provider. Ms. Garcia's dishonesty constituted misconduct in connection with the employment that disqualifies her for unemployment insurance benefits. Ms. Garcia is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Garcia.

DECISION:

The Agency representative's March 22, 2010, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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