

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOY D AHMED**

Claimant

**APPEAL NO. 12A-UI-04464-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 03/11/12**

**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Joy Ahmed, filed an appeal from a decision dated April 17, 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 May 14, 2012. The claimant participated on her own behalf. The employer, Swift, participated by Human Resources Assistant Tonya Box.

**ISSUE:**

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

**FINDINGS OF FACT:**

Joy Ahmed was employed by Swift from August 22, 2011 until March 14, 2012 as a full-time laborer. She was aware of the attendance policy and that she could be discharged after accumulating nine attendance points.

Ms. Ahmed received a written warning when she accumulated five points as of December 20, 2011. After that she was absent December 21 and 22, 2011, to go to her cousin's funeral which was out of town. The claimant had cleared the absences with her manager and a human resources representative. In addition, a copy of her cousin's obituary was faxed to the human resources department as requested. But no one told her she also had to fill out a form specifying the request was for a funeral leave. As a result those two days were counted against her and added two more points to her total.

After that she had left early on two occasions, for one point, two days of absence due to illness and finally she was 30 minutes late to work on March 14, 2012. The point total at that time was more than nine and she was discharged by Human Resources Representative Aureliano Diaz.

## 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 after accumulating more than nine points. But there is no proof she did not properly report her absences due to illness which would not constitute misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In addition, she had the approval from her manager and a human resources representative to be absent for two days in December 2011 to attend a funeral. The fact those absences were still counted against her was because she did not fill out the paperwork.

The claimant did not fill out the additional paperwork because no one, not her manager, not the human resources representative or even the employee handbook, notified her she was supposed to do this. The administrative law judge cannot therefore consider those absences to be unexcused and neither are the two properly reported absences due to illness.

Whatever standard the employer sets for excused and unexcused absences is not binding on Iowa Workforce Development for purposes of determining eligibility for unemployment benefits. The claimant had only two incidents where she left early and one where she was tardy to work due to illness. These together do not constitute excessive, unexcused absenteeism and disqualification may not be imposed.

**DECISION:**

The representative's decision of April 17, 2012, reference 01, is reversed. Joy Ahmed is qualified for benefits, provided she 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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