

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA AGUILERA
Claimant

APPEAL NO. 14O-UI-01197-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 10/13/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated November 4, 2013, reference 01, that held she was discharged for excessive unexcused absenteeism on October 17, 2013, and benefits are denied. A hearing was held in Des Moines, Iowa on March 13, 2014. The claimant, Interpreter Gisella Young, and Attorney, Michelle Jungers, participated. Aureliano Diaz, HR Interim Manager, participated for the employer. Claimant Exhibits A and B was received as evidence.

The Employment Appeal Board had remanded this matter for a new hearing because claimant did not receive a hearing notice for the November 27 telephone hearing.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on January 12, 2012 and last worked as full-time production on October 17, 2013. The claimant received the employer attendance policy that provides for points and progressive discipline.

The employer record is claimant received two points on December 28, 2012 for a late call absence and seven points for personal illness absence from January 14, 2013 through October 16. Claimant had been given a written warning in late September she was nearing the nine-point threshold for termination.

Claimant had a baby on December 24, 2012 and she requested FMLA through her doctor to March 10, 2013. The employer denied it because she had not been employed long enough to be eligible.

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(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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on October 17, 2013, for excessive "unexcused" absenteeism.

The employer counted seven points against claimant for personal illness that is not excessive unexcused absences. While the employer discharge is based on its policy, it is not for job disqualifying misconduct.

DECISION:

The decision of the representative dated November 4, 2013, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on October 17, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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