

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

AGUEDA ROSALES
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SWIFT & COMPANY
c/o EMPLOYERS UNITY INC
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Appeal Number: 05A-UI-05814-CT
OC: 04/17/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge from Employment
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Agueda Rosales filed an appeal from a representative's decision dated May 24, 2005, reference 01, which denied benefits on a finding that she was not able to work due to an injury. After due notice was issued, a hearing was held by telephone on June 23, 2005. Ms. Rosales participated personally and was represented by Christopher Godfrey, Attorney at Law. Exhibits A and B were admitted on Ms. Rosales' behalf. Rosie Paramo Ricoy participated as the interpreter. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses, and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Rosales began working for Swift on May 2, 1995. In July of 2003, she underwent surgery to her right shoulder as a result of work-related condition. Prior to the surgery, she was working as a janitor. She resumed her work as a janitor when released to return to work in November of 2003. She continued working as a janitor until August of 2004, when she was transferred to a position in which she was providing gloves and other equipment to workers. This was considered light-duty work and is made available to individuals who have work-related medical restrictions.

Ms. Rosales performed her light-duty work until January 27, 2005, when the employer removed her from the position. She was told that the doctor said she was unable to work. Ms. Rosales had not requested a leave of absence and had not encountered any problem performing the assigned work. She anticipates returning to work for Swift if offered work within her current restrictions.

Ms. Rosales' current medical restrictions are outlined in Exhibit B. She is able to lift, push, pull, and carry 10 to 15 pounds from the floor to her waist or from her waist to her shoulder occasionally. She is to perform no work above her shoulders. She should restrict her crawling and should not be on a ladder more than three feet in height. She is not to use any vibrating tools and should limit her gripping and grasping due to a history of carpal tunnel syndrome.

Ms. Rosales has not claimed benefits since filing her claim effective April 17, 2005. She has not been making weekly job contacts seeking work she is able to perform.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Ms. Rosales was separated from employment for any disqualifying reason. She was removed from her job at Swift on January 27, 2005, due to no fault of her own. Because she did not request a leave of absence, she is not voluntarily unemployed. Inasmuch as the separation was initiated by the employer, it is considered a discharge. The employer had the burden of proving that Ms. Rosales is disqualified from receiving benefits pursuant to Iowa Code section 96.5. See Iowa Code section 96.6(2). The employer has failed to establish that Ms. Rosales' separation was a disqualifying event. Accordingly, no disqualification is imposed as a result of the January 27, 2005 separation.

The next issue in this matter is whether Ms. Rosales has satisfied the requirements of Iowa Code section 96.4(3) since filing her claim effective April 17, 2005. The administrative law judge concludes that she is, in fact, able to engage in some type of work activity that is engaged in by others as a means of livelihood. Her restrictions are not such that all work activity is precluded. However, in addition to being able to work, an individual must actively and earnestly look for work as a condition for receiving job insurance benefits. Ms. Rosales acknowledged that she has not been making the work search required by Workforce Development. In fact, she has not claimed benefits for any week since filing her claim. She will remain disqualified from receiving benefits until she establishes that she is actively and earnestly looking for work within her restrictions.

DECISION:

The representative's decision dated May 24, 2005, reference 01, is hereby affirmed. Ms. Rosales was separated from Swift for no disqualifying reason but has not been actively looking for work since filing her claim. Benefits are withheld until such time as she submits proof to her local office that she is actively looking for work, provided she satisfies all other conditions of eligibility.

cfc/kjw