

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA D SANCHEZ
Claimant

APPEAL NO: 08A-UI-06132-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 06/08/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Maria D. Sanchez (claimant) appealed a representative's June 30, 2008 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Swift & Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2008. The claimant participated in the hearing. Tony Luse appeared on the employer's behalf. Anna Pottebaum, interpreter, translated during the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 20, 2004. The claimant worked as a full-time production employee. The claimant requested and the employer granted her a leave of absence from February 29 through March 24, 2008. Sometime before March 24, the claimant saw her doctor. The claimant's doctor did not release her to return to work. Instead, the claimant's doctor gave the claimant a work restriction that she could not work March 24 through April 28, 2008. The employer received the doctor's restriction either from the claimant or by fax. Since the claimant had not yet been released, the employer extended her leave of absence to April 28, 2008.

The claimant saw her doctor again sometime prior to April 28, 2008. Her doctor still would not release her to return to work. The claimant understood she would be released to return to work on May 25, 2008. The claimant also understood the doctor's office would fax the work restriction to the employer.

The employer did not receive a fax from the claimant's doctor or have any knowledge that the claimant had not been released to return to work until May 25, 2008. When the claimant did not

call or report to work on April 28, 29 and 30, the employer concluded she had voluntarily quit her employment by abandoning her job. The employer no longer considered the claimant as of April 30. The employer did not send the claimant a letter indicating she no longer had a job because she had not reported to work since April 28, 2008.

In May, the claimant's doctor confirmed that she could return to work on May 25. When the claimant reported to work on May 25, the employer informed her she no longer had a job because the employer considered her to have voluntarily quit when she did not return to work between April 28 through 30, 2008.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The facts establish that the claimant had no intention of quitting her employment. After the claimant's doctor released her to return to work as on May 25, 2008, the claimant reported to work and learned she no longer had a job. As of April 28, 2008, the claimant was unable to work for medical reasons.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant reasonably believed her doctor would fax information to the employer in late April that would extend her medical leave again to May 25, 2008. When her doctor had not released her to return to work as of March 24, the employer extended her medical leave to April 28, the date her doctor indicated she could return to work. Since the claimant did not receive any written verification her leave of absence had been extended from March 24 to April 28, she had no reason to think the employer had not extended her leave of absence again from April 28 to May 25.

The claimant's failure to follow up to make sure her doctor forwarded her new work restriction to the employer verifying the claimant could not work until May 25 at most amounts to poor judgment. Based on the facts in this case, the claimant did not commit work-connected misconduct. Additionally, since the claimant had been working since September 2004, the employer could have contacted her when she did not report to work on April 28 to find out if there had been any miscommunication between the claimant and the employer. Instead, the

employer followed its three-day no report policy and considered the claimant to have voluntarily quit by abandoning her employment. Since the claimant did not intend to quit, acted in a reasonable manner and did not commit work-connected misconduct, she is qualified to receive benefits as of June 8, 2008.

After the hearing when the claimant asked the employer if she would be eligible to reapply, she also asked if the employer had part-time instead of full-time work. Since the claimant had been working full-time, restricting herself to part-time work may mean she is not available to receive benefits. As of the date of the hearing, the claimant has not filed any weekly claims. An issue of her availability only needs to be addressed if she reopens her claim.

DECISION:

The representative's June 30, 2008 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. Therefore, as of June 8, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs