

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FABIOLA CARRILLO DE AGUILERA**  
Claimant

**APPEAL NO: 14A-UI-07100-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 06/15/14  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated July 2, 2014, reference 01, that held the claimant was not discharged for misconduct on April 29, 2014, and benefits are allowed. A telephone hearing was held on August 4, 2014. The claimant, Sabiola Carillo, her daughter, and Interpreter, Rafael Geronimo, participated. Javier Sanchez, Second Shift Supervisor, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on July 14, 2008, and last worked for the employer as full-time production on April 28, 2014. Claimant was off work due to illness from February 10, 2014 to her return on April 28. She provided a doctor excuse to the employer to cover the period of her absence.

When there appeared to be a change of leave date (from February 10 to March 10), the employer sought a verified date from the doctor. The employer obtained a copy showing March 10. The employer believed claimant had changed the date. Claimant had noted a nurse had changed the date with pencil but failed to enter it on the computer record. Claimant provided the employer with information to show why there was a date change but the employer would not accept it. Claimant was discharged for document falsification on April 29.

Claimant's daughter speaks English and was with her mother at every doctor appointment. She witnessed the nurse change the doctor excuse date that led to the falsification allegation.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on April 29, 2014.

The employer failed to offer what it believes is a falsified medical excuse document as evidence, and the employer witness who was directly involved. Claimant offered a reasonable explanation about the changed date issue that was corroborated by her daughter. A nurse had changed the start date but failed to enter it on the computer record. When the employer sought a review of the note, there was no doctor record of the change.

Claimant did not falsify the medical excuse date. She was excused from work beginning February 10, 2014. Job disqualifying misconduct is not established.

**DECISION:**

The department decision dated July 2, 2014, reference 01, is affirmed. The claimant was not discharged for misconduct on April 29, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs