

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

CRISTINA CORDOVA  
208 N 6<sup>TH</sup> ST  
MARSHALLTOWN IA 50158

SWIFT & COMPANY  
C/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

ROSIE PARAMO-RICOY  
INTERPRETER  
4316 GRAND AVE #7  
DES MOINES IA 50312

Appeal Number: 05A-UI-03805-S2T  
OC: 03/06/05 R: 02  
Claimant: Appellant (5)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Able and Available  
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cristina Cordova (claimant) appealed a representative's April 6, 2005 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 5, 2005. The claimant participated personally through Rosie Paramo-Ricoy, Interpreter. The employer participated by Jeremy Cook, Human Resources Manager.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 9, 2003, as a full-time production worker. Her work permit was set to expire on December 19, 2004. In September 2004, the claimant applied for a new work permit but no permit was issued. On December 17, 2004, the employer told the claimant she had 60 days to get a new work permit. On January 19, 2005, the employer issued the claimant a letter of termination based on the claimant's failure to obtain a new work permit. It would be illegal for the employer to employ the claimant without a valid work permit. The claimant continues to call the Immigration and Naturalization Service but no work permit has been issued.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. Consequently the employer did not meet its burden of proof to show misconduct.

The second issue is whether the claimant is able and available for work. For the following reasons the administrative law judge concludes she is not.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

When an employee does not have a valid work permit she is considered to be unavailable for work. The claimant did not have a valid work permit after December 19, 2004. She is considered to be unavailable for work after December 19, 2004. The claimant is disqualified from receiving unemployment insurance benefits beginning December 19, 2004, due to her unavailability for work.

#### DECISION:

The representative's April 6, 2005 decision (reference 01) is modified with no effect. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible. The claimant is disqualified from receiving unemployment insurance benefits beginning December 19, 2004, due to her unavailability for work.

bas/pjs