

**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**

**MIGUEL SUAREZ
319 W 15TH ST
SOUTH SIOUX CITY NE 68776**

**SIOUX-PREME PACKING COMPANY
PO BOX 255
SIOUX CENTER IA 51250**

**IKE ROCHA
ROCHA INTERPRETERS LLC
3919 FRANKLIN AVENUE
DES MOINES IA 50310**

**Appeal Number: 06A-UI-03641-ET
OC: 02-19-06 R: 01
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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 20, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 19, 2006. The claimant participated in the hearing with Interpreter Ike Rocha. Walter Ortega, Safety Director, and Barb Coffman, Nurse, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time wizard knife operator for Sioux-Preme Packing from March 30, 2004 to February 2, 2006. The claimant pulled a muscle in his back in October 2004. On October 14, 2005, he complained that the same injury was bothering him,

and the employer sent him to their doctor, who determined his back problem was not due to the pulled muscle a year earlier. The claimant was released by his own physician with restrictions October 17, 2005, but the employer did not have any work available that met his restrictions. The claimant returned to the doctor and asked him to lift the restrictions and the doctor agreed but stated he would not be liable if further injury occurred. The claimant worked until October 28, 2005, and was then unable to continue because of his degenerative back condition. The employer asked the claimant to provide a medical release so they could determine his work status but the claimant did not comply. The employer gave the claimant FMLA papers to take to his doctor, but the claimant did not return the forms. The employer sent certified letters to the claimant December 22 and December 30, 2005, notifying the claimant that his FMLA was going to expire January 31, 2006, and when the claimant did not respond, the employer terminated his employment February 2, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer told the claimant verbally and in writing that he needed to provide FMLA paperwork before his FMLA ran out January 31, 2006, but the claimant failed to comply with the employer's procedures. Because the claimant's absences were not properly excused through FMLA, the employer did not have any verification that he was off work due to injury. Consequently, the administrative law judge concludes the claimant's absences were unexcused and constitute disqualifying job misconduct. Benefits are denied.

DECISION:

The March 20, 2006, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/kkf