

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA CASTELLANOS
Claimant

APPEAL NO. 09A-UI-04616-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 02/08/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Swift & Company filed an appeal from a representative's decision dated March 13, 2009, reference 01, which held that no disqualification would be imposed regarding Patricia Castellanos' separation from employment. After due notice was issued, a hearing was held by telephone on April 20, 2009. Ms. Castellanos participated personally. The employer participated by Aaron Vawter, Human Resources Coordinator.

ISSUE:

At issue in this matter is whether Ms. Castellanos was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Castellanos was employed by Swift from April 28, 2008 until February 11, 2009. She worked full time in production. She was discharged because of her attendance.

Ms. Castellanos was absent for unknown reasons on July 28, 2008. Her discharge was prompted by her absences of February 9 and 10, 2009. She left Iowa on February 6 to travel to Arizona to pick up her sister and nephew who had been evicted from their home. While in Arizona, her vehicle broke down. She called the employer on February 9 to report that she would be absent because her car broke down. She called on February 10 to report that she was out of town. She was notified of her discharge on February 11. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged is disqualified from receiving job insurance benefits if she was discharged for misconduct. Iowa Code section 96.5(2)a. An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for

reasonable cause and it must be properly reported. 871 IAC 24.32(7). There must be a current act of misconduct to support a disqualification from benefits. 871 IAC 24.32(8).

Ordinarily, absences due to matters of purely personal responsibility, such as transportation, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Ms. Castellanos' final absences of February 9 and 10 were due to the fact that she experienced a vehicle breakdown while out of state. She did not have a history of missing work due to transportation issues. Given the unexpected nature of the problem and the fact that she was out of the state when it occurred, the administrative law judge concludes that the two absences are not sufficient to establish disqualifying misconduct.

It was well within the employer's prerogative to discharge Ms. Castellanos. However, conduct that might warrant a discharge will not necessarily sustain a disqualification from job insurance benefits. For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated March 13, 2009, reference 01, is hereby affirmed. Ms. Castellanos was discharged by Swift but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css