

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAMONA V VILLA**  
Claimant

**APPEAL NO. 09A-UI-06190-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**Original Claim: 03/08/09  
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 April 8, 2009, reference 01, which held that no disqualification would be imposed regarding Ramona Villa's separation from employment. After due notice was issued, a hearing was held by telephone on May 19, 2009. Ms. Villa participated personally and offered additional testimony from Christopher Wells. The employer participated by Aaron Vawter, Human Resources Coordinator.

**ISSUE:**

At issue in this matter is whether Ms. Villa 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. Villa began working for Swift on March 17, 2008 as a full-time production worker. On January 14, 2009, she was placed on probation because of her attendance. She could not miss any time from work during the following 90 days. If she did, she would be discharged from the employment.

Ms. Villa reported to work as scheduled on February 4, 2009. She was coughing, had a temperature, and was feeling achy all over. She wanted to go home but knew she risked discharge because of the probation. Therefore, she spoke with Tony Luse in the human resources department to see if she would still have a job if she went home. He told her to go home and that he would check with her supervisor as to whether she still had a job. She was told she would be called. Over the next few days, she attempted to reach Mr. Luse, but he was never available and did not return messages she left. She went in on February 9 and was told she no longer had a job with Swift.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that Ms. Villa's separation was initiated by the employer when she was not allowed to continue working. Although she did not call to report absences on February 5, 6, and 9, she attempted contact with the employer during this period to determine if she still had a job. Given the terms of her probation and the statement made to her by Mr. Luse, her failure to call to report the absences was reasonable. She was waiting for the employer to tell her

whether she still had a job in light of her absence of February 4. Ms. Villa's actions were not those of one who intends to quit employment. For the above reasons, her separation is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from 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 must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. There must be a current unexcused absence to support a disqualification from benefits. See 871 IAC 24.32(8).

Ms. Villa was on probation as of January 14, 2009 with the understanding that she would be discharged if she missed any time from work before April 14, 2009. The first instance of absence during the probation was on February 4. She was acting in good faith when she went to the workplace on February 4 in spite of the fact that she felt too ill to work. She wanted to know if she would still have a job if she missed work that day due to her illness. Inasmuch as the absence was for reasonable cause and was reported to the employer, it is excused. She did miss work after February 4, as she continued to be ill. Ms. Villa continued to act in good faith by attempting to contact the employer after February 4 to find out if she still had a job. Given the employer's failure to get back to her, it is reasonable to infer that she was discharged as a result of the absence of February 4, as it violated the terms of the probation.

As stated previously herein, the absence of February 4 is considered excused. There had been no unexcused absence since at least prior to the probation that began January 14. An unexcused absence that occurred before January 14 would not represent a current act in relation to the February 4 termination date. For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish that the discharge was prompted by a current act of misconduct. Accordingly, benefits are allowed.

The administrative law judge notes that Ms. Villa's testimony was consistent with her statement given to Workforce Development during the fact-finding interview. Therefore, the employer knew or should have known what her contentions were. The employer did not offer any witness or written statements to refute those contentions.

#### **DECISION:**

The representative's decision dated April 8, 2009, reference 01, is hereby affirmed. Ms. Villa was discharged by Swift, but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw