

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

IRMA-MARIA VERDINEZ  
1106 WOODBURY ST  
MARSHALLTOWN IA 50158

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

Appeal Number: 05A-UI-07409-DWT  
OC: 05/22/05 R: 02  
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, 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 96.5-2 - Discharge

STATEMENT OF THE CASE:

Irma-Maria Verdinez (claimant) appealed a representative's July 14, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits and the account of Swift & Company (employer) would not be charged, because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 8, 2005. The claimant participated in the hearing. Jeremy Cook, the human resource manager, appeared on the employer's behalf. Aaron Votter observed the hearing. Rosie Paramo-Ricoy interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 2, 1998. The claimant worked full-time as a production worker. The employer's attendance policy informs employees they can be discharged if they accumulate ten attendance points or they can enter into an attendance contract. The attendance contract informs employees that if they miss a day of work or are late for work within 90 days of signing the contract, the employer will discharge the employee.

On March 28, 2005, the claimant signed an attendance contract because she had accumulated ten attendance points. The claimant understood that if she missed one day of work or was late for work within the next 90 days, the employer would discharge her. On May 13, 2005, the claimant was late for work. The employer discharged the claimant on May 17, 2005, for violating the provisions of the March 28, 2005 attendance contract.

The claimant was either 6 or 25 minutes late for work on May 13. The claimant was late because her babysitter did not answer her door right away and the two started talking. The claimant got to work at 6:00 a.m., but was not dressed and ready to go to work until after the start of her 6:00 a.m. shift.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The facts establish the claimant knew or should have known her job was in jeopardy on March 28, 2005, when she signed an attendance contract verifying she understood she would be discharged if she missed any work within the next 90 days. On May 13, the claimant was late for work. Although the parties disagreed as to how late the claimant reported to work, they agreed she was late for work. While the administrative judge sympathizes with the claimant's situation, the facts do not reveal what, if anything, the claimant did to make sure she was not late or absent from work after March 28, 2005. The claimant was late for work on May 13, for an unexcused reason. As the result of an attendance problem, the employer discharged the

claimant for work-connected misconduct. As of May 22, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 14, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 22, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/kjw