

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: RoSalva Muratalla-Ortiz was a production worker for Swift & Company from May 1, 2001 until she was discharged on September 13, 2005. Ms. Muratalla-Ortiz underwent abdominal surgery in late July of 2005. She returned to work on September 7, 2005. Feeling a burning sensation, she went to the restroom to check her incision. She found that she was bleeding. With permission from her supervisor she left work. During a severe thunderstorm and tornado warning she was examined by a physician on September 8, 2005. After the examination which included an ultrasound, the doctor prescribed a ten-day regimen of antibiotics and pain medication. The doctor advised Ms. Muratalla-Ortiz not to drive because of the medication. She gave Ms. Muratalla-Ortiz a note which initially indicated that she was to be off work on September 8 and 9. At some time, someone altered the note to indicate that Ms. Muratalla-Ortiz should be off work September 8 and 19, 2005. Ms. Muratalla-Ortiz did not alter the note. The note was handled by the doctor's nurse and the pharmacist to whom Ms. Muratalla-Ortiz took the prescriptions.

On September 13, 2005 Ms. Muratalla-Ortiz took the note to Swift & Company. Noting the apparent alteration, Human Resources Manager Jeremy Cook called the doctor who indicated that she had not made it. Based on this statement Mr. Cook discharged Ms. Muratalla-Ortiz.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with her work. It does not.

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).

This administrative law judge almost never bases a decision on demeanor evidence. The present case marks a rare exception. Throughout the hearing the claimant's body language and voice inflection persuaded the administrative law judge of her sincerity. Other evidence tends to corroborate the claimant's contention that the doctor or someone from her staff made the alteration. The evidence establishes that the claimant was given a ten-day supply of medication and was told not to drive a motor vehicle. Since the claimant was a production worker at a packing house, it is entirely plausible that a reasonable medical practitioner would also advise the claimant to avoid working with machinery or sharp knives. A release from work through September 19 is more consistent with the prescribed medications than would be a release through September 9. Furthermore, the evidence of the chaotic conditions at the clinic at the time of the examination on September 8 indicates to the administrative law judge that the alteration could have been made in haste and then forgotten.

From all this the administrative law judge concludes that the evidence does not establish that the claimant deliberately altered the medical documentation. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated October 7, 2005, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

dj/kjw