

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA D SANCHEZ
Claimant

APPEAL NO. 10A-UI-09079-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 06/06/10
Claimant: Appellant (1)

Section 96.6-2 – Previously Adjudicated

STATEMENT OF THE CASE:

The claimant appealed a representative's June 25, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the April 12, 2010 employment separation had been addressed in an earlier decision, June 21. A telephone hearing was held on August 5, 2010. The claimant participated in the hearing. Jenny Mora, the employment manager, appeared on the employer's behalf. Olga Esparza interpreted the hearing.

Since the decision for the June 2009 and June 2010 claim years were made just four days apart and the appeals from the decision were held at the same time, the decision for the June 25, 2010 decision is the same as for the June 21, 2010 decision. 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 claimant voluntarily quit her employment for reasons that qualify her to receive benefit or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The employer rehired the claimant in November 2009. The claimant experienced some medical issues and called in sick on March 24, 2010. The claimant's Iowa doctor restricted her from working March 24 until April 12, 2010. The employer understood the claimant would return to work on April 12, 2010.

The claimant decided to go to Mexico to get another opinion about her medical issues. The claimant left Iowa on March 26, 2010. After a doctor in Mexico examined the claimant, surgery was scheduled on April 9, 2010. The claimant did not think to contact the employer to let the employer know she was in Mexico and would be having surgery. Sometime between March 24 and April 15, the claimant contacted the doctor in Iowa and asked her to contact the employer. The doctor in Iowa indicated she could not do this; because when the claimant went to Mexico, the Iowa doctor was no longer her treating physician.

When the claimant did not return to work by April 12 or have any contact with the employer since March 23, the employer concluded the claimant abandoned her employment and quit. The claimant contacted the employer on April 15 to see if she or someone on her behalf could pick up her paycheck. The employer received faxes from the claimant's physician in Mexico on April 21, 22, and 23. The faxes verified the claimant was being treated in Mexico and she had surgery. The claimant's physician did not release her to return to work until May 18.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The evidence indicates the employer ended the claimant's employment when she did not return to work on April 12, 2010.

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).

When the claimant went to Mexico, she had a doctor's excuse stating she could not work March 24 through April 11, 2010. Based on the doctor's statement, the employer understood the claimant would return to work on April 12, 2010. While getting a second opinion from a doctor in Mexico is not the problem, the claimant's failure to keep the employer informed about her medical condition amounts to an intentional and substantial disregard of the employer's interests. Just as an Iowa doctor sent the employer a statement indicating the claimant needed to be off work for a medical condition, the claimant could have asked the doctor in Mexico to fax a statement to the employer advising the employer about the claimant's April 9 surgery and the time she needed to recover. The claimant's failure to keep the employer informed about her medical situation, her surgery, and the time she needed to recover, amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant's failure to take reasonable steps to keep her employer informed amounts to work-connected misconduct. As of May 16, 2010, the claimant is not qualified to receive benefits.

When the claimant established a second benefit year during the week of June 6, 2010, her April 12 employment separation had not yet been adjudicated. When a decision has been decided, a subsequent decision on the same separation will not be looked at because a decision on the merits has already been made. Iowa Code section 96.6-2. Since the two decisions were made just four days apart, the decision for appeal 10AUI-09078-DWT has been incorporated in this decision.

DECISION:

The representative's June 25, 2010 decision (reference 01) is affirmed. The claimant did not voluntarily quit her employment. Instead, the employer discharged her when the claimant failed to report to work on April 12 and failed to keep the employer notified about the status of her medical condition. The employer established that the claimant's failure to keep the employer informed about her medical condition amounts to work-connected misconduct. The claimant remains disqualified from receiving unemployment insurance benefits as of June 6, 2010. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw