

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIRNA Y PAZ VELASQUEZ
Claimant

APPEAL NO. 11A-UI-16487-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

**OC: 11/20/11
Claimant: Appellant (4)**

Section 96.5(2)a – Discharge
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Mirna Paz Velasquez, filed an appeal from a decision dated December 28, 2011, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 26, 2012. The claimant participated on her own behalf and Patricia Vargas acted as interpreter. The employer, Swift, participated by Aureliano Diaz..

The parties waived their right to notice on the issue of whether the claimant is able and available for work.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Mirna Paz-Velasquez was employed by Swift from February 21, 2007 until November 22, 2011 as a full-time production worker. She was working under a work authorization permit or “green card” which expired November 22, 2011.

Ms. Paz-Velasquez went to a lawyer to file papers for renewal of the green card in October 2011. Due to an error in the paperwork by the attorney the renewal request was rejected. On November 22, 2011, Aureliano Diaz informed the claimant she could not continue to work there as her green card had expired. She is welcome to reapply for work when the card is received, but as of the date of the hearing the renewal has not been approved.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer could not keep the claimant on its payroll as she was not authorized to work in the United States. Allowing her to remain as an employee would expose the employer to legal or criminal liabilities.

The lack of the green card was not due to any negligence or willful failure to apply for renewal on the part of the claimant. She was discharged but not for misconduct.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Although the claimant is not guilty of any wrongdoing in the failure of her green card to be renewed, the fact remains that she is not able to work in the United States until the renewal is approved. She is therefore ineligible for benefits.

Ms. Paz-Velasquez should immediately provide proof to her local Workforce Center as soon as her green card is renewed.

DECISION:

The representative's decision of December 28, 2011, reference 02, is modified in favor of the appellant. Mirna Paz-Velasquez is not disqualified from receiving benefits because her discharge was not due to misconduct. Nonetheless she is ineligible for benefits as she does not have permission to work in the United States without a work permit.

As soon as the claimant's green card is renewed she should take such proof to her local Workforce Center to establish her availability for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

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