

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA G ROSAS

Claimant

APPEAL NO. 13R-UI-07023-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 06/24/12

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Maria Rosas , filed an appeal from a decision dated July 13, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 19, 2013. The claimant participated on her own behalf and was represented by Iowa Legal Aid in the person of Jim Kringlen. Anna Pottebaum acted as interpreter. The employer, Swift, participated by Interim Human Resources Manager Aureliano Diaz. Stacey Santillian observed the proceedings but did not offer testimony.

ISSUE:

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

FINDINGS OF FACT:

Maria Rosas was employed by Swift from March 26, 2008 until June 25, 2012 as a full-time production worker. She received a copy of the employer's attendance policy in Spanish and signed the original and, later, an updated copy. The policy is no-fault and points are assessed for absences and tardies. An employee who is going to be absent must call the dedicated attendance line at least 30 minutes before the start of their shift. A properly reported absence will be assessed one point, but calling in after the 30-minute window will be assessed two points. Nine points in a rolling 12-month period is grounds for discharge.

Ms. Rosas received a written warning for attendance in February 2011 and a second one in February 2012. Her most recent absences started Friday, June 15, 2013, when she called in properly to notify the employer of her absences. But on Monday, June 18 through Thursday, June 21, 2013, she called in less than 30 minutes before the start of her shift. For some reason she believed that she could not call in more than 30 minutes before the start of the shift, although she could have.

As a result these last four absences were assessed at two points each and, with the one point for the absence which was properly called in, she had accumulated nine points. Interim Human

Resources Manager Aureliano Diaz met with Ms. Rosas on Monday, June 25, 2013. She had statements from her doctor excusing her from work for those days. At first she insisted she had called in a timely manner but the employer provided her with the hard copy of all her calls. She and a union representative checked the information and it was confirmed she had not called in at least 30 minutes before the start of her shift. She maintained she had only been a minute or two late because she did not think she could call in earlier than the 30-minute deadline.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was absent due to the illness of her child. Nonetheless she did not properly notify the employer of four absences by calling in at least 30 minutes before the start of her shift. A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). But these absences were not properly reported even if they were due to illness. The lack of proper reporting means they are unexcused absences. Under

the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of July 13, 2012, reference 01, is affirmed. Maria Rosas is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css