

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATIENCE GAYE

Claimant

APPEAL NO. 13A-UI-05130-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 03/31/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Swift Pork Company filed a timely appeal from a representative's decision dated April 18, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that she was dismissed from work under non disqualifying conditions unless claimant's absences were due to illness and properly reported. After due notice, a telephone hearing was held on June 5, 2013. Claimant participated. The employer participated by Mr. Luis Meza, Human Resource Supervisor.

ISSUE:

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

FINDINGS OF FACT:

Patience Gaye was employed by Swift Pork Company from May 7, 2008 until April 2, 2013 when she was discharged for exceeding the permissible number of attendance infractions allowed under the company's attendance policy. Ms. Gaye was employed as a full-time production worker and was being paid by the hour.

Ms. Gaye was considered to have exceeded the permissible number of attendance infractions under the company's policy effective March 29, 2013 when she was unable to report to work that day. The employer initially believed the claimant had not called in to report her absence but subsequently determined that the claimant had called in.

Ms. Gaye had slipped on the floor at work on March 25, 2013 and had been provided a note by her doctor to excuse the claimant from reporting to work until April 2, 2013. Ms. Gaye had called in each day to report her impending absence and had presented a doctor's note to the company covering the period of time that she had most recently been absent.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant. 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.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The Supreme Court in the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is one form of job misconduct. The Court held that the absences must both be excessive and unexcused.

The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

The evidence in the record establishes the claimant's absences were due to illness or injury and were properly reported. The administrative law judge concludes based upon the evidence in the record that the claimant was discharged under non disqualifying conditions. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 18, 2013, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs