

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAUDIA MERICAL
Claimant

APPEAL NO: 12A-UI-02415-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 01-22-12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 2, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 12, 2012. The claimant participated in the hearing with Interpreter Anna Pottebaum. Aureliano Diaz, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time second shift line supervisor for Swift Pork Company from November 27, 2006 to December 6, 2011. She was diagnosed with depression and was excused from work from September 19 through December 30, 2011. The last fax from the claimant's physician received by the employer excused her through December 1, 2011. The claimant did not report for work December 2, 2011, so the employer sent her a letter January 11, 2012, stating her employment was terminated effective December 2, 2011. She testified she called in to report her absences between December 2 and December 13, 2011. She also talked to the employer and stated she had another doctor's appointment December 13, 2011. During that appointment her doctor excused her from work through December 30, 2011. The claimant's doctor's excuses were faxed to the employer by the doctor's office and the claimant believed her physician faxed notes to the employer excusing her from work through December 30, 2011. She tried to schedule another doctor's appointment by December 30, 2011, but had difficulty with her insurance and was forced to apply for financial assistance from the clinic between December 30, 2011, and January 20, 2012, at which time she was released to return to work but had received the termination letter shortly after January 11, 2012. She did not call the employer between December 31, 2011, and receipt of the termination letter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant's physician faxed the notes excusing her from work to the employer and the claimant believed her absence was excused by doctor's notes through December 30, 2011, although the employer terminated her employment effective December 2, 2011. She tried to make another appointment with her treating psychologist after December 30, 2011, furthering her credibility that she did not know the employer had not received her doctor's excuse covering her absence through December 30, 2011, or had terminated her employment. The claimant was unable to schedule another appointment with her doctor after December 30, 2011, because of problems with her insurance but unbeknown to her the employer had already discharged her. She applied for financial assistance from the clinic but before that came through the claimant received the termination letter stating her employment was terminated effective December 2, 2011. The employer testified the last call it received from the claimant was December 7, 2011. The claimant's absences were properly reported either through doctor's notes or calls from the claimant through December 7, 2011, and the claimant was not notified of her termination until a letter was sent to her January 11, 2012. The claimant had no reason to believe the employer had not received the last doctor's note excusing her from work through December 13 and then through December 30, 2011, and she called to report her absences through at least December 7, 2011, before stopping because she had a fairly long-term excuse. Consequently, because the claimant's final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The March 2, 2012, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css