

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SONIA JARAMILLO

Claimant

APPEAL NO. 12O-UI-10022-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 02/12/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sonia Jaramillo (claimant) appealed a representative's March 23, 2012 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Swift Pork Company (employer). Administrative Law Judge Scheetz issued a decision on April 10, 2012, reversing the representative's decision. A decision of remand was issued by the Employment Appeal Board on August 17, 2012. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 14, 2012. The claimant did provide a telephone number for the hearing but did not answer the telephone call from the administrative law judge. Therefore, she did not participate. The employer participated by Javier Sanchez, Human Resources Assistant Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 1, 2009, as a full-time production worker. The claimant notified the employer that she had to take time off work to care for her ex-husband and later her sister. Both had been diagnosed with severe medical conditions. The employer agreed to the claimant's absence beginning October 8, 2011, so long as she reported her absence every day. The claimant reported her absence each day, even days she was not scheduled. On February 14, 2012, the claimant returned to work and the employer terminated her. A secretary told the Human Resources Manager that the claimant did not call the employer on November 25, 26 and 28, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 23, 2012 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css