

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ALICIA IBARRA RUIZ
509 E BOONE ST
MARSHALLTOWN IA 50158

SWIFT & COMPANY
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 05A-UI-00836-CT
OC: 01/02/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Alicia Ibarra Ruiz filed an appeal from a representative's decision dated January 24, 2005, reference 01, which denied benefits based on her separation from Swift & Company. After due notice was issued, a hearing was held by telephone on February 10, 2005. Ms. Ruiz participated personally and Exhibit A was admitted on her behalf. The employer participated by Tonya Box, Human Resources Assistant. Rosie Paramo Ricoy participated as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Ruiz was employed by Swift from January 29, 2002 until January 3, 2005 as a full-time laborer. She was discharged because of her attendance.

Ms. Ruiz was absent on January 15, 2004 but did not contact the employer to report the absence. The absence was considered unexcused. She was absent due to illness on June 7 and September 7, 2004 but did not provide a doctor's statement for either date as required. She had been notified on November 17, 2003, that she would need to present a doctor's statement to support future absences. Both absences were considered unexcused. On September 8, Ms. Ruiz was placed on 90 day's probation because of her attendance. She did not miss any work during the probationary period.

The decision to discharge Ms. Ruiz was due to the fact that she was absent on December 31 for personal reasons. She notified the employer that she had company at home and could not leave the company with her husband. The absence was considered her fourth unexcused absence within one year and, therefore, she was discharged on January 3, 2005. Ms. Ruiz had been notified each time she accumulated attendance points.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Ruiz was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Ruiz was discharged because of her attendance. Given the fact that she had been placed on probation because of her attendance, she knew that her attendance was unsatisfactory. She had only recently completed the probation when she accumulated an unexcused absence. The absence of December 31 is unexcused as it was for personal reasons, the fact that she had company at home. The fact that she did not miss any work during the probation is indicative of the fact that Ms. Ruiz was capable of meeting the employer's attendance standards.

The administrative law judge concludes that Ms. Ruiz' unexcused absence following probation constituted a substantial disregard of the standards she knew the employer expected of her. It is concluded, therefore, that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated January 24, 2005, reference 01, is hereby affirmed. Ms. Ruiz was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/pjs