

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ISAAC LINCOLN**

Claimant

**APPEAL NO: 09A-UI-17672-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**

Employer

**OC: 10-25-09**

**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 13, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on January 5, 2010. The claimant participated in the hearing. Tony Luse, Employment Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

**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 production worker for Swift & Company from February 23, 2009 to August 11, 2009. The claimant experienced some difficulty getting paid for the actual number of hours worked on a few occasions. He pursued the matter with his supervisor, human resources and the union and was then sent to another office but he could not state when the problems with his check occurred and when he received the correct number of hours on his check. Tony Luse, Employment Manager, was not aware the claimant was having any problems with his paycheck. The claimant did not keep track of his hours to know how many hours and the dates his check was short so the employer could correct the problem. Additionally, there is a supervisor's clock, a time clock and then gang time which measures the amount of floor time actually worked. The employer generally uses the gang time plus a few minutes on the front and back of that time to determine hours worked so if an employee clocks in early he is not paid for that time. The claimant was also trying to transfer to a different area because his hand hurt and swelled from doing the job he was assigned. He saw the nurse and was told to put some analgesic cream on it. The employer testified that condition passes after the employee gets used to doing the job but the claimant's hands hurt the entire length of his employment. His knee also bothered him because the crate he had to stand on would bend sometimes putting pressure on his knee. The claimant stated he experienced problems with

some other employees who he believes confused him with another employee but the employer was unable to address the situation because the claimant did not know the names of the employees who were harassing him. The claimant asked for time off August 8, 2009, to attend a family reunion. His request was denied because he had accumulated four attendance occurrences in less than five months of work. The claimant's last day of work was August 7, 2009. He did not return to work after that day when he told human resources he was quitting because of the problems with his checks, although his last check prior to his leaving was correct.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant was upset about his checks being short on a few occasions, the pain in his hand and knee, not being transferred and the harassment from some co-workers. The problem with his checks seemed to be cleared up and the claimant did not keep track of his weekly hours so that made it virtually impossible for the employer to correct the checks he said were short because he could not tell them when he worked and what checks were allegedly short. It is also possible the claimant misunderstood the pay system and did not realize he was paid by the gang time rather than supervisor time or the time clock because the employer did not pay employees for clocking in early. The employer credibly testified it had every intention of paying the claimant and all employees for all hours worked. The claimant's hand and knee soreness is unfortunate but when he went to the nurse he was told that was normal for working on the equipment he worked on and that he should rub analgesic cream on his hand. There is no evidence the claimant pursued his hand problem further either with the company nurse or his own doctor. The employer could not simply transfer the claimant to another job because the union contract required that the claimant bid on another job. Because he did not have a worker's compensation claim and was not assigned to light duty work the employer did not have the option of transferring him to another position. The claimant also testified he was being harassed by other employees he believes confused him with another employee but the claimant did not know the names of any of the possible harassers which made it difficult for the employer to take any action on that front. The claimant had accrued four attendance occurrences during the approximately five months he was employed. When he asked for August 8, 2009, off work to attend a family reunion his request was denied as a result of his number of attendance occurrences. He did not show up for work August 8, 2009, and quit his job, telling the employer it was due to having trouble with his checks, although he testified his last check was correct and maybe the few before that as well but he could not remember. It seems if he was still experiencing problems with his paycheck he would have remembered

whether his checks were correct and the dates when they were not. The claimant has not proven that the reasons stated for his leaving rise to the level of unlawful, intolerable, or detrimental working conditions as required by Iowa law. Consequently, the administrative law judge concludes the claimant voluntarily left his job because he was denied the day off to attend his family reunion as the last day he worked was the day before he requested the time off. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The November 13, 2009, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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