

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TUM CHIN
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 20A-UI-08515-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: APPELLANT (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On July 6, 2020, the claimant filed an appeal from the June 30, 2020, (reference 01) unemployment insurance decision that denied benefits based on failing to report to work for three days. The parties were properly notified about the hearing. A telephone hearing was held on August 31, 2020. Claimant participated and her daughter Deborah Chin. Employer participated through Vicky Cervantes, HR Manager. The hearing was interpreted.

ISSUE:

Did claimant voluntarily quit his employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 19, 2019. Claimant is still employed at Swift Pork Company (Swift) in Marshalltown Iowa. Claimant is a general laborer. On April 13, 2020 claimant had Covid-19 symptoms. The policy of Swift at that time was for employees to self-quarantine. Claimant reported to Swift she had symptoms. Claimant was tested on April 20 and received a positive test result on April 21, 2020. Claimant was deemed eligible for a Covid-19 short term disability program provided to employees by Swift. Claimant received her first Covid-19 short term disability payment on May 1, 2020 and her last payment on July 1, 2020. Claimant was asked to prove a medical release before she could return to work. Claimant obtained a statement on June 18, 2020 from Natalie Brown, PC-C authorizing claimant to return to work on June 29, 2020. Claimant returned to work and was examined by a nurse at the Swift plant. As claimant was experienced symptoms she was sent home. On June 30, 2020 claimant was examined by Samantha Farris PA-C and advised to stay home from work due to respiratory symptoms. On July 24, 2020 claimant was released to return to work and did so.

REASONING AND CONCLUSIONS OF LAW:

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the

claimant voluntarily left his employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant has not been discharged and is currently an employee at Swift. There is no convincing evidence that claimant was a No Call/No Show for three consecutive days. The employer knew the claimant had tested positive Covid-19 and told claimant not to report until released by a medical provider. The employer was paying claimant short term disability. Claimant provided her medical excuses. She attempted to work on June 29, 2020 but was sent home. Claimant returned to work on July 24, 2020. While claimant has missed some work after her July 24, 2020 return to work, the absences were properly reported.

The evidence in the record establishes a discharge/layoff for no disqualifying reason.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 30, 2020, (reference 01) unemployment insurance decision is reversed. Benefits are awarded, provided she is otherwise eligible.



James F. Elliott
Administrative Law Judge

September 1, 2020
Decision Dated and Mailed

je/mh