

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA C GUTIERREZ
Claimant

APPEAL NO. 08A-UI-01825-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 01/20/08 R: 02
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Maria Gutierrez (claimant) appealed a representative's February 12, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 10, 2008. The claimant participated personally through Patricia Vargas, Interpreter. The employer participated by Tony Luse, Employment Manager, and Rosario Alvarez, Human Resources Coordinator.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

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 12, 2001, as a full-time production worker. On December 13, 2007, the claimant asked for four weeks Family Medical Leave (FMLA) to visit her father in Mexico who was ill. She provided a note from a doctor in a clinic in Mexico that said her father had a fever. The Human Resources Coordinator telephoned the clinic. The clinic had no records of the claimant's father. Based on this information the employer denied the claimant's request for FMLA. The claimant said she was quitting if she was not given four weeks leave. She turned in her badge and left. Continued work was available had the claimant not resigned. On January 7, 2007, the claimant returned to the employer to ask for work. No work was available at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work 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.

871 IAC 24.25(20) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. She was absent from work for personal reasons for more than ten working days. When an employee is absent from work for more than ten working days for compelling personal reasons, her leaving is without good cause attributable to the employer. The claimant left work for more than ten working days for compelling personal reasons. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's February 12, 2008 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css