

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YAHIA A KUBARA
Claimant

APPEAL NO. 09A-UI-04617-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 02/08/09
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Swift & Company filed an appeal from a representative's decision dated March 13, 2009, reference 02, which held that no disqualification would be imposed regarding Yahia Kubara's separation from employment. After due notice was issued, a hearing was held by telephone on April 21, 2009. The hearing was originally scheduled for 11:00 a.m. on April 20. Because of a prior hearing running long, it was rescheduled to April 21. As of April 21, Mr. Kubara still had not responded to the notice of hearing. The employer participated by Aaron Vawter, Human Resources Coordinator.

ISSUE:

At issue in this matter is whether Mr. Kubara was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kubara began working for Swift on June 4, 2007 and worked full time as a production laborer. On or about March 28, 2008, he provided the employer with a doctor's statement indicating he needed to be off work for two weeks. It was anticipated he would return to work on or about April 11. Mr. Kubara was to update the employer within the two weeks if his status changed.

The employer did not hear anything further from Mr. Kubara after March 28. He was eventually processed off the payroll on May 19, 2008. He never indicated to the employer that he was advised by a doctor to leave the employment. Continued work would have been available if he had returned to work or had notified the employer of his intentions.

Mr. Kubara filed a claim for job insurance benefits effective February 8, 2009. He has received a total of \$3,610.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

Mr. Kubara abandoned his job when he failed to return to work following a leave of absence and failed to notify the employer of his intentions. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless his quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Kubara did not participate in the hearing to explain why he failed to return to work. There was no evidence that he was advised by a doctor to leave the job or that continuing in the job posed a threat to his health. The evidence of record does not establish any good cause attributable to Swift for the separation. As such benefits are denied.

Mr. Kubara has received job insurance benefits since filing his claim. As a general rule, an overpayment of job insurance benefit must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if M. Kubara will be required to repay benefits already received.

DECISION:

The representative's decision dated March 13, 2009, reference 02, is hereby reversed. Mr. Kubara quit his employment with Swift for no good cause attributable to the employer. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Kubara will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs