

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA V GONZALEZ

Claimant

APPEAL NO. 11A-UI-01937-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 12/26/10

Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant, Sara Gonzalez, appealed an unemployment insurance decision dated February 16, 2011, reference 02, that concluded she requested and was granted a leave of absence and was ineligible for benefits. A telephone hearing was held on March 17, 2011. The parties were properly notified about the hearing. Gonzalez participated in the hearing with the assistance of an interpreter, Blanca Jaelow. Javier Sanchez participated in the hearing on behalf of the employer.

ISSUES:

Did Gonzalez request and receive a leave of absence from the employer?

Was she able to and available for work?

FINDINGS OF FACT:

Sara Gonzalez worked full-time for the employer as a production worker from March 17, 2008, to December 16, 2010. Her job involved substantial lifting of heavy products.

Gonzalez was suffering from shoulder pain in 2010. She had reported this several times to the company nurse, who provided ice and non-prescription pain medication. When her condition did not improve, she went to her family doctor on December 17. Her doctor informed her that the work she was doing was aggravating an arthritic condition in her shoulder. He prepared a medical statement that restricted Gonzalez from lifting, pushing, pulling, or lifting over 20 pounds. Gonzalez submitted the medical statement to a supervisor on December 18, 2010, but was told that the employer did not have work for her with her restrictions. The supervisor sent her home and told her to check back each week to see if the employer had work accommodating her restrictions. Gonzalez continued to report to the plant weekly until February 28, 2011, when she was offered and accepted work that was within her restrictions. She has continued to work since that time.

REASONING AND CONCLUSIONS OF LAW:

The 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 claimant did not quit and was not discharged for misconduct.

The unemployment rules provide that a claimant who requests and is granted a leave is considered voluntarily unemployed and unavailable for work. 871 IAC 24.23(10). In this case, Gonzalez reported to work, but her supervisor sent her home because the employer did not have work within the claimant's restrictions. She did not request a leave of absence, but instead she wanted to work but the employer did not have work for her.

The final issue in this case is whether Gonzalez is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that Gonzalez was able to perform gainful work, just not work that requires heavy lifting. There is work available in the labor market meeting such restrictions that Gonzalez is qualified to perform, and she has been actively looking for such work in compliance with the requirements of the law.

DECISION:

The unemployment insurance decision dated February 16, 2011, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw