

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

PHILLIP R PENCIL

Claimant

APPEAL 22A-UI-05040-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 01/09/22

Claimant: Appellant (1)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 16, 2022, reference 05, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 11, 2022. Claimant participated personally. Employer participated by Kristina Cervantes. Employer's Exhibits 1-6 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant voluntarily quit without good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked for employer as a full-time hog tattooer. He stated that as a result of his tattooing, he tore the tendon on the middle finger of his right hand. This injury happened in May. Claimant went to his doctor, and then to the company doctor. When he went to the company doctor, the doctor stated that nothing was wrong. The doctor sent him back to work. Claimant last worked for employer on June 25, 2021. Claimant stopped working because the pain became too great.

Claimant stated that although the company doctor told him that there was nothing wrong and sent him back to work, the employer did take him off of the job as employer realized that claimant could not do the work.

Employer's witness did not know the history of the claimant with the employer and employer's documents were at odds with the testimony given. Employer's documents indicated, through some of the documents, that claimant had ongoing work history through late 2021 and could possibly have remained employed into 2022. Neither employer nor claimant believed this to be the case as both claimant and employer acknowledged that claimant did not show up for work or contact employer from late June of 2021 until at least December of 2021.

REASONING AND CONCLUSIONS OF LAW:

In this matter, claimant had no contact with employer for over six months. Even if the claimant had shown a doctor's note allowing claimant to be off from work because of a medical necessity for his tendon injury, employer would have required claimant to stay in touch with employer at regular intervals. (In all likelihood, if employer had taken claimant off of the tattooing job because of the injury, claimant would have been placed on a job where he could have used the other arm.) As claimant has not provided adequate proof to substantiate his story that employer just let him off of work with no contact for a six month time period only to terminate him four months later, this matter is looked at as a quit.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship by failing to stay in contact with employer because his hand was injured at work and he didn't believe he was treated fairly.

In this matter, claimant had a right to pursue a worker's compensation matter as a separate legal cause of action. Claimant instead chose to stop coming to work and did not provide a doctor's note that would have excused claimant from doing his job and would have shown employer that claimant's injury was caused through claimant's work. Choosing to simply not come to work for an extended period of time because one believes one was injured at work without a medical diagnosis does not constitute good cause attributable to employer. Benefits are denied.

DECISION:

The decision of the representative dated March 16, 2022, reference 05, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

September 8, 2022
Decision Dated and Mailed

bab/ar

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.