

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD JOHNSON
Claimant

APPEAL NO. 10A-UI-01651-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 01/03/10
Claimant: Appellant (1)**

Section 96-5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Gerald Johnson filed a timely appeal from a representative's decision dated January 26, 2010, reference 01, which denied benefits based upon his separation from Swift & Company. After due notice was issued, a telephone hearing was held on March 25, 2010. The claimant participated personally. The employer participated by Ms. Cheryl Hughlette, human resource manager.

ISSUE:

At issue is whether the claimant quit employment for reasons attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Gerald Johnson was employed by Swift & Company from August 26, 2007, until December 26, 2009, when he was separated after failing to report for work for three or more consecutive workdays without providing notification. Mr. Johnson worked as a full-time production worker and was paid by the hour.

Mr. Johnson was separated from his employment with Swift & Company after he failed to return from a scheduled vacation period and did not report for scheduled work for three or more consecutive workdays without providing notification to the employer. Mr. Johnson had been arrested for intoxication on Swift & Company property prior to returning from an approved leave of absence. The claimant was incarcerated. During the time the claimant was incarcerated, he did not provide daily notice to the employer of his impending absences as required by company policy. After the claimant had failed to return to employment and had provided no notification for an extended period, the employer reasonably concluded that the claimant had relinquished his position with the company.

REASONING AND CONCLUSIONS OF LAW:

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(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.

871 IAC 24.25(16) 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:

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

The claimant's employment came to an end because he did not report for scheduled work or provide notification for three or more consecutive workdays because he was incarcerated. Good cause for leaving this employer for reasons attributable to the company have not been established. Benefits are withheld.

DECISION:

The representative's decision dated January 26, 2010, reference 01, is affirmed. The claimant left employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw