

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

**BRAD L CASSATT**

Claimant

**APPEAL 23A-UI-02609-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 02/19/23**

**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit from Employment

Iowa Admin. Code r. 871-24.26(1) – Quit Due to Change in Contract of Hire

**STATEMENT OF THE CASE:**

On March 10, 2023, claimant Brad L. Cassatt filed an appeal from the March 7, 2023 (reference 01) unemployment insurance decision that denied benefits based on a finding that he quit employment with Swift Pork Company and did not have a good-cause reason that was attributable to the employer. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Tuesday, March 28, 2023. Claimant Brad L. Cassatt participated personally. Employer Swift Pork Company did not appear or participate in the hearing. No exhibits were received or admitted into the record.

**ISSUE:**

Did the claimant voluntarily quit employment with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Swift Pork Company on October 11, 2021. He worked full-time hours throughout his employment. First, claimant held a dock worker position for approximately eight months. Next, claimant moved into a cold side maintenance mechanic position on third shift. Just prior to claimant's employment ending, the employer moved him to second shift. Claimant tried out a wizard knife operator position for one day. He then quit his employment. Claimant was not at risk of being discharged if he had not quit.

Claimant reported to work on February 6, 2023, after having been out for five days due to COVID-19. He worked alongside his coworkers all morning without incident. Claimant then went to lunch and sat across from Greg Cook, as usual. Cook began calling claimant derogatory names, stating he had to "carry [claimant's] job" because claimant had been out sick. Cook then threw down his toolbelt and walked outside, taunting claimant to come out and fight him. Claimant got up and walked directly to his supervisor, John Rambo. While claimant was talking to Rambo, he heard a coworker on the radio say, "Come back in Greg, he's not coming, come on inside."

Claimant told Rambo that Cook harassed him and was attempting to assault him. Rambo sent claimant home for the remainder of the shift and promised to investigate. The following day, the employer had commenced an investigation. The employer concluded that claimant's account was true and that Cook had called claimant derogatory and profane names and tried to fight him. The employer issued Cook a final written warning. Claimant and Cook were then sent back to work together.

When claimant got back to his shift, Cook called him a "rat" and a "snitch." Claimant immediately reported this to Human Resources. Due to both of them being mechanics and carrying heavy tools around, claimant feared for his safety. The employer took no action against Cook but told claimant that he could move to a maintenance position on second shift. However, when claimant reported to second shift the following day, he was given a list of 150 production jobs and told he had to select a position from among them. When he asked about moving to the maintenance department, the employer told him that would not be happening. Claimant was informed that he could bid into a job at the dock or he could take a job in production. Claimant skimmed the list and selected a job operating the wizard knife. Someone from HR then told him that this job paid \$8.00 per hour less than his maintenance position.

Claimant spent one day training in the wizard knife operator position. He found the position physically challenging and painful. When the shift was over, he reported to Monica in HR that the job was to physically taxing for him. Between the physical labor on the production line and the heavy protective gear required, it was not an appropriate fit for claimant. However, Monica would not help claimant or let him find a different position. She just told him that he "should be happy with what [he] got." At that point, claimant knew that he would not be able to continue working for the employer. He never returned to work.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant quit his employment with good cause attributable to the employer. Benefits are allowed.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire

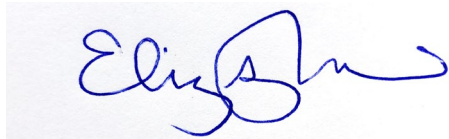
must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Here, the claimant had been successfully performing his work as a mechanic on third shift until his coworker began harassing him and threatened to fight him. When claimant reported this behavior, the harassment persisted and claimant continued to feel unsafe. After claimant reported it again, the employer responded—not by moving the problematic employee who was harassing a coworker and threatening violence, but by moving the victim of the harassment. In moving claimant, the employer subjected claimant to a change in his contract of hire by fundamentally changing his type of work, changing his shift, and reducing his pay by \$8.00 per hour. Claimant went from working as a mechanic – a job he could capably physically perform that required no specialized protective gear – to working as a production-line employee, which required heavy protective gear and hard physical labor that his body could not handle. The detriment to his body was of equal, if not greater, weight than the detriment that Cook's harassment had been to his psyche. Claimant quit his employment with good cause attributable to his employer, and benefits must be allowed.

**DECISION:**

The March 7, 2023 (reference 01) unemployment insurance decision is reversed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Elizabeth A. Johnson  
Administrative Law Judge

March 29, 2023  
Decision Dated and Mailed

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**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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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](http://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 adquiriera 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.