

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTNEY M LINNEAR
Claimant

APPEAL NO. 09A-UI-16825-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 06/21/09
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 October 26, 2009, reference 04, which held that no disqualification would be imposed regarding Brittney Linnear's separation from employment. After due notice was issued, a hearing was held by telephone on December 15, 2009. Ms. Linnear participated personally and offered additional testimony from Lacy Scott. The employer participated by Javier Sanchez, Assistant Human Resources Manager.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Linnear began working for Swift on July 27, 2009 as a full-time production employee. As a new employee, she was on probation for 75 working days. Probationary employees are allowed to accumulate three attendance points before they risk discharge.

As of September 23, Ms. Linnear had seven attendance points. Therefore, the employer decided to extend her probationary period by 60 days. She was presented with the documentation on September 23 when she returned to work after having been gone for one week due to illness. The human resources department asked her to sign the documentation acknowledging that her probation was being extended, but Ms. Linnear refused. Because she had an excuse from her doctor for her absences, she did not feel it was fair that her probation be extended. Therefore, she refused to sign the acknowledgement even though she was told she would not have employment if she did not. When she continued to refuse to sign the form, she was not allowed to return to work.

Ms. Linneear filed an additional claim for job insurance benefits effective October 4, 2009. She has received a total of \$2,920.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes from all of the evidence that Ms. Linneear initiated her separation from Swift when she refused to sign the acknowledgement that her probation was being extended due to her attendance. She knew that signing the form was a condition of her continued employment but still refused to sign. This was not a case of quit or be fired, as the employer did not have plans to discharge her for some unrelated matter. In short, she was not going to be discharged because of the refusal to sign the form but because her attendance was such that she was at the discharge stage. For the above reasons, the administrative law judge concludes that the separation was a quit.

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Linneear was a probationary employee who had only been with Swift for approximately two months and already had four attendance points more than necessary to cause discharge. Even though an individual may have reasonable grounds for being away from work, it does not mean the employer should not bring to their attention that the absences are a problem. Rather than discharge Ms. Linneear because of her absences, the employer opted to give her another opportunity to maintain her employment by extending the probationary period. Therefore, the employer's request that she sign the acknowledgment of probation was not unreasonable.

Ms. Linneear contended that the human resources associate who presented her with the acknowledgment would not allow her to speak to the human resources manager on the matter. The administrative law judge did not find this contention credible. Moreover, she did not ask to speak to the plant manager regarding either the probation or any refusal to allow her to see the human resources manager. Also, she could have signed the document as requested and asked questions later. If she still disagreed with the probation after having an opportunity to ask questions, she could have quit at that time. Ms. Linneear's response to the probation was unreasonable under the circumstances.

For the reasons cited herein, the administrative law judge concludes that Ms. Linneear did not have good cause attributable to the employer for quitting and benefits are denied. She has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits 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 benefits already received will have to be repaid.

DECISION:

The representative's decision dated October 26, 2009, reference 04, is hereby reversed. Ms. Linnear quit her employment with Swift for no good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Linnear will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw