

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID V HARRIMAN
Claimant

APPEAL NO. 10A-UI-12709-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 08/08/10
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated August 31, 2010, reference 01, which denied benefits based upon his separation from Swift & Company. After due notice was issued, a telephone hearing was held on October 25, 2010. The claimant participated. The employer participated by Ms. Cheryl Hughlette, human resource manager.

ISSUE:

At issue is whether the claimant quit employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: David V. Harriman was employed by Swift & Company from January 22, 2007, until July 12, 2010, when he was separated for job abandonment. Mr. Harriman worked as a full-time production worker and was paid by the hour.

Mr. Harriman's employment with Swift & Company came to an end on July 12, 2010, after the claimant had failed to report to work and had not provided notification as required for three consecutive workdays on July 8, 9, and 12, 2010.

Mr. Harriman discontinued reporting for work and did not provide notification to the employer after July 7 because he had been incarcerated for an approximate three-week period. Prior to being absent, the claimant had not requested permission to be off, and the claimant did not call in each day as required by company policy. Under Swift & Company policy, time spent incarcerated is considered unexcused time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant left employment without good cause attributable to the employment.

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) and (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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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

The evidence in the record establishes that Mr. Harriman was incarcerated for an approximate three-week period and did not comply with the requirement that he provide daily notice to the employer about his impending absences or, in the alternative, obtaining permission in advance to be absent. Mr. Harriman did not use alternative methods to inform his employer of his impending absences and the reasons for them. After the claimant had failed to report or provide any notification to the employer for three consecutive workdays, the employer reasonably concluded that the claimant had left employment. Mr. Harriman was absent due to incarceration. Under 871 IAC 24.25(16), leaving work due to incarceration is presumed to be without good cause attributable to the employer. Benefits are withheld.

DECISION:

The representative's decision dated August 31, 2010, reference 01, is affirmed. The claimant is disqualified. 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