

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCO GALVAN

Claimant

APPEAL NO. 09A-UI-16373-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT TRANSPORTATION CO INC

Employer

OC: 09/27/09

Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Swift Transportation Company, Inc. (Swift) filed an appeal from a representative's decision dated October 19, 2009, reference 01, which held that no disqualification would be imposed regarding Marco Galvan's separation from employment. After due notice was issued, a hearing was held by telephone on December 8, 2009. Mr. Galvan participated personally. The employer participated by Danielle Garcia, Human Resources Recruiter, and Tammy Johnson, Fleet Manager. The hearing record was left open to allow the employer to provide telephone records requested by the administrative law judge. The hearing reconvened on January 5, 2010. Mr. Galvan again participated personally. The employer participated by Tammy Johnson and Peter Chapin, Regional Human Resources Manager.

ISSUE:

At issue in this matter is whether Mr. Galvan 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: Mr. Galvan was employed by Swift from July 21 until September 11, 2009. He worked full time as a shuttle driver at Proctor & Gamble. He voluntarily quit the employment after he was reprimanded. He indicated he was unhappy with the fact that the employer did not back him up in a dispute with the customer.

On September 9, Mr. Galvan reported that a load was overweight and was directed to return it so that adjustments could be made. He returned the load to the warehouse and called his dispatcher. The dispatcher indicated he would assign him to a new load. Mr. Galvan returned to the guard shack and was asked for his paperwork. He indicated he had left the paperwork with the warehouse supervisor. The two then had an argument about the location of the paperwork and, as a result, Mr. Galvan was verbally reprimanded. He was told he would need to follow instructions if he wanted to retain his job. Approximately one hour later, he called his fleet manager and quit. Continued work would have been available if he had not quit.

Mr. Galvan filed a claim for job insurance benefits effective September 27, 2009. He has received a total of \$5,933.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

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). Mr. Galvan quit after being reprimanded. An individual who leaves employment after being reprimanded is presumed to have left employment without good cause attributable to the employer. 871 IAC 24.25(28).

Mr. Galvan was reprimanded because he engaged in an argument with the guard at Proctor & Gamble. Any problem he had with the guard or the instructions given by the guard should have been addressed with his employer, not the employer's customer or the customer's agent. For this reason, the reprimand was not unreasonable. There was no evidence that the reprimand was delivered in such a fashion that Mr. Galvan would be justified in quitting. On the whole, the evidence failed to establish good cause attributable to the employer for quitting. As such, benefits are denied.

Mr. Galvan has received benefits since filing his 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 19, 2009, reference 01, is hereby reversed. Mr. Galvan quit his employment for no good cause attributable to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Galvan will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css