

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARSHYLA A SULTAN

Claimant

APPEAL NO: 09A-UI-15093-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY

Employer

Original Claim: 09/13/09

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Barshyla A. Sultan (claimant) appealed a representative's September 30, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 9, 2009. The claimant participated in the hearing. Tony Luse appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on October 20, 2008. He worked full-time as a production worker on the second shift in the employer's Marshalltown, Iowa, pork processing facility. His last day of work was April 24, 2009.

The claimant had arranged for a leave of absence beginning April 24, 2009 to go out of the country to attend to some family issues; he was scheduled to return to work on July 1, 2009. While he was out of the country, his wife was hospitalized with malaria from about June 28 until about July 3. As a result, he delayed his flight returning to the United States. He attempted to call the employer to advise the employer of the delay, and he left a message on or about July 1 indicating that he would be returning a week late, so on or about July 8.

The claimant did return to the United States and was back in Iowa on or about July 5. However, he did not return to the employer at that time. He further delayed his return to the employer because he had lost his apartment while he was out of the country, his driver's license had

expired, and his car had broken down. He did not seek to return to the employer until on or about July 15. At that time, the employer declined to allow the claimant to return to work, as he had not returned to work at least by July 8 and had been a no-call, no-show for work. The employer considered the claimant to have voluntarily quit by job abandonment under its three-day no-call, no-show policy, of which the claimant was on notice.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if at the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits; and, conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is therefore deemed to have voluntarily quit the employment. Further, an intent to quit can be inferred in certain circumstances. For example, a three-day no-call, no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). The claimant did exhibit the intent to quit and did act to carry it out. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Quitting by failing to return to work due to personal issues, such as lack of transportation and housing, are not good causes attributable to the employer. 871 IAC 24.25(1),(23). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's September 30, 2009 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 8, 2009, benefits are withheld until such time as 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw