

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J STEWART
Claimant

APPEAL NO. 10A-UI-08797-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 05/16/10
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Michael Stewart filed a timely appeal from the June 10, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 5, 2010. Mr. Stewart participated and presented additional testimony through his father, Watson Stewart. Jenny Mora, Employment Manager, represented the employer.

ISSUE:

Whether Mr. Stewart's voluntary quit was for good cause attributable to the employer.

Whether Mr. Stewart voluntarily quit for the necessary and sole purpose of taking care of an immediate family member, whether the family member sufficiently recovered for Mr. Stewart to be able to return to the employment, and whether Mr. Stewart returned and offered his services to the employer after the family member recovered.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Stewart was employed by Swift & Company, d/b/a JBS, from September 2007 until April 8, 2010, when he voluntarily quit the employment. Mr. Stewart provided the employer with written notice, dated March 29, 2010, that he would be leaving the employment effective April 9, 2010. Mr. Stewart participated in an exit interview and indicated at that time that he was quitting because he was leaving the area. Mr. Stewart quit the employment so that he could relocate to Norfolk, Virginia to assist with caring for his ill father. Mr. Stewart's father had undergone two brain surgeries, had suffered a stroke, and had both knees replaced. Mr. Stewart's mother is 73 years old. Mr. Stewart relocated to provide assistance to his father and his mother. Mr. Stewart moved in with his parents and has continued to assist with his father's care. Mr. Stewart indicates his father has not recovered sufficiently for Mr. Stewart to be able to return to his employment at JBS/Swift. Since Mr. Stewart separated from the employment, he has not returned to the employer to offer his services.

Mr. Stewart's decision to leave the employment was not based on anything related to the employment and the employer continued to have work available for Mr. Stewart at the time he separated from the employment.

Mr. Stewart has sought further employment since he relocated to Virginia.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Administrative code rule 24.26(20), echoes this statute.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When a worker voluntarily quits to relocate, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(2).

When a worker voluntarily quits due to family responsibilities or serious family needs, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(23).

When a worker voluntarily leaves employment for compelling personal reasons, but the absence exceeds 10 working days, the worker is presumed to have quit the employment without good cause attributable to the employer. See 871 IAC 24.25(20).

The weight of the evidence in the record establishes that Mr. Stewart voluntarily quit the employment for the sole purpose of relocating to Virginia to care for his ailing father. Mr. Stewart's father has not recovered sufficiently for Mr. Stewart to be able to return to his employment at JBS/Swift in Iowa. Mr. Stewart has not returned and offered his services to JBS/Swift. Though Mr. Stewart had compelling personal reasons for leaving the employment, his voluntary quit was without good cause attributable to the employer. Accordingly, Mr. Stewart is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Stewart.

DECISION:

The Agency representative's June 10, 2010, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs