

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ADRIANA CHAVARRIA**  
Claimant

**APPEAL 17R-UI-03444-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 01/08/17  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(1)c – Voluntary Quitting – Care for Family Member

**STATEMENT OF THE CASE:**

Adriana Chavarria (claimant) filed an appeal from the January 27, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit her position with Swift Pork Company (employer) after three consecutive no-call/no-show absences. The parties were properly notified about the hearing for appeal number 17A-UI-01165-SC-T. A telephone hearing was held on February 22, 2017. The claimant participated personally. The employer participated through Assistant Human Resource Manager Elizabeth Tellez. The hearing was interpreted by Ashika (employee number 9613) and Kanould (employee number 9733) from CTS Language Link. On February 24, 2017, the administrative law judge issued a decision in appeal number 17A-UI-01165-SC-T affirming the January 27, 2017, reference 01, decision and denying the claimant benefits.

The claimant appealed the decision to the Employment Appeal Board (EAB). On March 24, 2017, the EAB remanded the case to the administrative law judge to develop the record regarding whether the claimant is eligible for benefits pursuant to Iowa Code § 96.5(1)c. The EAB did not vacate the administrative law judge's decision in appeal number 17A-UI-01165-SC-T and it remains in effect until such time as a new decision is issued.

Following due notice to both parties, a hearing on the remanded issue began on April 20, 2017. The hearing was rescheduled due to technical difficulties for April 26, 2017 and concluded that day. The claimant participated. The employer participated through Human Resources Nicolas Aguirre. The hearing was interpreted by Joel (employee number 10092) and Manuel (employee number 10412) from CTS Language Link. The testimony and evidence collected during the hearing for appeal number 17A-UI-01165-SC-T is adopted in its entirety into this hearing record.

**ISSUES:**

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Did the claimant voluntarily quit employment to care for a family member?

## **FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Laborer beginning on January 30, 2008, and her last day worked was December 3, 2016. The claimant had requested and was approved for a two-week vacation during which she traveled to Mexico. She was to return to work on December 19, 2016. The claimant did not return to work on that day as her father, who lives in Mexico, had emergency prostate surgery the day before. The claimant did not notify the employer she would not return on December 19, 2016 as she did not have the employer's phone number with her. On December 29, 2016, the employer determined that, per its policy, the claimant had resigned her position because she missed work without notifying the employer of her absences on December 27, 28, and 29, 2016.

The claimant's father was in the hospital for a week and then required additional help at home to recover. She was the only one available to provide assistance to her father, as her mother is also elderly and has health problems. The claimant felt her father had sufficiently recovered on January 8, 2017 and returned to the United States around 6:00 p.m. The following day, around 1:30 p.m., the claimant reported to the employer's facility to discuss her employment. She was told at that time there was no work available to her.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from employment but voluntarily quit. However, she is not disqualified from benefits as she quit to take care of an immediate family member who was ill and immediately returned to offer services to the employer but no work was available to her. Benefits are allowed.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. If an employee is absent for three days without notice to an employer and the employer has a policy stating the same, that employee is presumed to have quit without good cause attributable to the employer. Iowa Admin. Code r. 871-24.25(4). However, an employee shall not be disqualified from benefits if he or she voluntarily quit to care for an ill or injured immediate family member and, once the family member recovered, returned to the employer to offer work. Iowa Code § 96.5(1)c.

The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The employer has met its burden to show the claimant voluntarily left her employment. However, the claimant is still qualified for benefits. The claimant voluntarily quit because her father, an immediate family member, became ill. The claimant's presence was necessary as she was the only person available to care for him during his recovery due to her mother's age and health problems. After her father had sufficiently recovered, the claimant returned to the United States on the evening of January 8, 2017. She immediately offered services to the

employer when she reported to the office the following day, but no work was available. Accordingly, benefits are allowed.

**DECISION:**

The January 27, 2017, reference 01, unemployment insurance decision is reversed. The claimant voluntarily left her employment to care for an immediate family member who was ill and, upon his recovery, immediately returned to the employer to offer services but work was not available. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Per the EAB remand, the decision issued by the administrative law judge in appeal number 17A-UI-01165-SC-T is vacated and no longer in force as a new decision has been issued.

---

Stephanie R. Callahan  
Administrative Law Judge

---

Decision Dated and Mailed

src/rvs