

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUANITA M LAVENDER
Claimant

APPEAL NO. 11A-UI-01732-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

**OC: 01/02/11
Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 2, 2011, reference 01, that the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on March 15, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Tonya Box participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer from November 22, 2010, to December 30, 2010. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be considered to have quit employment after three days of absence without notice.

The claimant was scheduled to work on January 3, 4, and 5, 2011. The claimant failed to report to work and failed to notify the employer regarding her absences, and therefore, was deemed to have voluntarily left employment. The claimant never complained to management about any intolerable or detrimental working conditions or any other reasons for quitting.

The claimant filed for and received unemployment insurance benefits for the weeks between January 2 and February 6, 2011.

REASONING AND CONCLUSIONS OF LAW:

The 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. The unemployment insurance rules state that a

claimant absent for three days without giving notice to employer in violation of company rule is presumed to have quit employment without good cause attributable to the employer. 871 IAC 24.25(4). The claimant quit work after she was absent for three consecutive days without notice to the employer. No good cause has been shown for quitting employment.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated February 2, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs