

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAVYARIMANA WILSON
Claimant

APPEAL NO. 11A-UI-15886-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 10/16/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 17, 2011, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. Telephone hearings were held on January 12 and March 12, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing represented by Christopher Rottler, Attorney at Law, and assisted by interpreter, Byiringiro Rushimisha. Aureliano Diaz participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant quit or was he discharged from employment?

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a production worker for the employer from May 18, 2009, to August 12, 2011. 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 were considered to have quit after three days of absence without notice.

The claimant's father died in April 2011. His father and family lived in Tanzania. He was not able to go home at that time, but was granted bereavement leave for three days. In August 2011, the claimant planned to return to Africa to visit his family. There is an African tradition in his country for the family to get together after a death to talk about the deceased relative and what he said before he died and to make sure the family is taken care of. In mid-August 2011, the claimant had requested time off from his supervisor. The supervisor told him that he could not grant the request, but the claimant could go to human resources. The claimant went to the human resources office and provided copies of his travel itinerary and his father's death

certificate. The human resources manager said he would look into the leave request. The travel itinerary would have shown him leaving on August 19 and returning on October 5, 2011.

The claimant does not speak or understand English well. He misunderstood the manager and believed he was given leave. He left Iowa to travel to Africa. He did not intend to quit his employment when he left work.

The claimant was given time off work from August 15 to 19, 2011. When he did not report to work or call in on August 22, 23, and 24, 2011, he was considered to have voluntarily quit employment and a separation form was completed on August 30, 2011, documenting this.

The claimant returned to Iowa on the evening October 5, 2011, and contacted the employer immediately on October 6, 2011, when he was informed that he no longer had a job.

The claimant did not receive the disqualification decision mailed to his last-known address on November 17, 2011. The decision stated that it would become final if not appealed by November 27, 2011. Later, when he inquired about the status of the matter with his local Workforce Development Center, he was informed about the decision and appealed it on December 12, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The claimant's appeal is deemed timely because he did not have an opportunity to file a timely appeal and filed the appeal immediately after he learned he had been disqualified.

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. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe that the claimant understood that after he had provided the requested paperwork that his leave was granted. I do not believe it actually was granted, but there was a misunderstanding that was probably due to a language problem. The claimant immediately contacted the employer when he returned from Africa and was told that he did not have a job. This must be treated as a discharge by the employer at that point. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated November 17, 2011, reference 01, is reversed.
The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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