

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH D HENSON
Claimant

APPEAL NO. 08A-UI-02233-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 01/20/08 R: 02
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Swift & Company filed a timely appeal from an unemployment insurance decision dated February 25, 2008, reference 01, that allowed benefits to Kenneth D. Henson. After due notice was issued, a telephone hearing was held March 20, 2008 with Mr. Henson participating. Employment Manager Tony Luse participated for the employer.

ISSUE:

Did the claimant leave employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kenneth D. Henson was employed by Swift & Company from April 24, 2006 until he resigned January 10, 2008. He was a production worker who last worked as a wizard knife operator on the cut floor.

Mr. Henson worked as part of a three-person team. One of the individuals resigned suddenly. In a meeting on January 9, 2008, the foreman told Mr. Henson and his remaining partner that if they would do the work of all three he would make certain that a floater was available to provide them with bathroom breaks. Under these conditions, they agreed. Shortly thereafter, however, the floater was transferred to another part of the plant and Mr. Henson was unable to take bathroom breaks when needed. He had been denied bathroom breaks by his foreman in the past.

Swift & Company is aware that the law requires employers to allow employees to use the bathroom.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant left work with good cause attributable to the employer. It does.

Iowa Code section 96.5-1 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.

An individual may receive unemployment insurance benefits if the individual resigns because of illegal working conditions or because of intolerable or detrimental working conditions. See 871 IAC 24.26(3) and (4).

Significantly, the employer did not call the foreman in question to testify. Mr. Luse, the employment manager, stated that he had no information indicating that Mr. Henson's testimony was incorrect. Mr. Luse also volunteered that he was aware that the law required employers to provide bathroom breaks to employees and that he would have dealt with the situation had he been given the opportunity to do so. This begs the question. Mr. Luse should not have had to deal with the situation. The supervisor should have followed the law. The administrative law judge concludes that the evidence establishes good cause attributable to the employer for the resignation. Benefits are allowed.

DECISION:

The unemployment insurance decision dated February 25, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/kjw