

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

WYATT GUTHRIE

Claimant

APPEAL NO. 22A-UI-17632-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 09/04/22

Claimant: Appellant (5)

Iowa Code Section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

On October 3, 2022, Wyatt Guthrie (claimant) filed a timely appeal from the September 29, 2022 (reference 03) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on September 4, 2022 due to a non-work related illness or injury and without good cause attributable to the employer. After due notice was issued, a hearing was held on October 26, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Wyatt Guthrie (claimant) most recently began employment with Swift Pork Company in August 2021. The claimant worked for the employer as a full-time "Mezzanine Operator," a line production position that involved fast-paced and repetitive handling of boxes of product weighing up to 40 pounds. The job involved lifting, throwing, stacking and unstacking the boxes. The claimant's shift began at 2:45 p.m. and would end sometime between 11:30 p.m. and 4:00 a.m. The claimant worked Monday through Friday and most Saturdays.

The claimant last performed work for the employer on March 23, 2022 and began a health-related leave of absence at that time. A few days before the claimant went off work, he felt a "popping, pulling pain shoot down" his left leg, left hip and into his groin area as the claimant walked down some stairs at work at the start of his lunch break.

On March 29, 2022, the claimant consulted his primary care doctor, who referred the claimant for physical therapy and to a specialist. The claimant advises the referral for physical therapy

was a prerequisite for authorization for an MRI and that the physical therapy ended after six sessions.

In mid-April 2022, the claimant had his first appointment with the specialist. That specialist gave the claimant a cortisone injection in his hip, which did not provide relief. The claimant understood his health issues to include his hip, sciatica, and a “crunch” in his back. After the cortisone injection provided no relief, the specialist referred the claimant to a second medical specialist, who gave the claimant an epidural injection in his spine. The epidural injection did not provide relief. The claimant advises that both specialists concluded the claimant would likely need surgery. The second specialist referred the claimant to a neurosurgeon. The claimant last saw the second specialist in August 2022.

The claimant applied for and was approved for a medical leave of absence under the Family and Medical Leave Act (FMLA). The claimant exhausted FMLA leave effective July 3, 2022. The employer’s human resources staff authorized an extension of the leave through August 25, 2022. As of August 25, 2022, the claimant had not been released by a doctor to return to work and was waiting for his appointment with the neurosurgeon. The employer’s human resources staff did not authorize an extension of the leave of absence beyond August 25, 2022. The claimant has not had contact with the employer’s human resources staff since the employer authorized leave through August 25, 2022.

The claimant has not asked the employer to allow him to return to light-duty work or any other accommodation. The claimant is concerned that a request for light-duty work might lead to loss of the Mezzanine Operator position he “owns” under the job-bidding protocol.

The claimant advises that his most recent medical note indicates he to remain off work until his appointment with the neurosurgeon.

As of the October 26, 2022 appeal hearing date, the claimant was still waiting for his appointment with the neurosurgeon, which the claimant advised was scheduled for Monday, October 31, 2022. The claimant was still waiting to learn whether surgery would be recommended.

The claimant has continued to call the employer’s absence reporting line on a daily basis to report his continued need to be absent from work. The claimant has not provided notice to the employer that he intends to quit the employment. The employer has not provided notice to the claimant that he is discharged or laid off.

The claimant established an original claim for unemployment insurance benefits that was effective September 4, 2022. The claimant did not immediately commence making weekly claims. The claimant reopened the claim effective September 18, 2022 and commenced making weekly claims. Swift Pork Company is a base period employer in connection with the claim. When making weekly claims, the claimant has consistently reported that he is able to work and available for work, though his ongoing unresolved health issues indicate otherwise. Iowa Workforce Development records indicate the claim for benefits is currently locked due to an able and available determination.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

The evidence in the record indicates the claimant went off work effective March 23, 2022 due to a medical issue. The claimant was on a leave of absence that was extended to, but not beyond, August 25, 2022. Due to the claimant's serious unresolved medical condition, the claimant did not return to work at that time. The claimant has provided no medical documentation to assist the administrative law judge in determining whether the claimant's health condition is work-

related or non-work related. The administrative law judge need not determine for purposes of this decision whether the claimant's illness is work-related or non-work related, as both possibilities lead to the same outcome in the present matter. To the extent the health condition might be work-related, the claimant elected not to ask the employer for a reasonable accommodation. To the extent the health condition might be non-work related, the claimant has not recovered from the health issue that took him off work, has not been released by a doctor to return to his former duties, and has not thereafter returned to request reinstatement to the employment. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. In the event the claimant's doctor, or doctors, determine the claimant's condition is work-related, the claimant may also requalify for benefits by satisfying the requirements set forth at Iowa Code section 96.5(1)(d) and Iowa Administrative Code rule 817-24.26(6)(a) referenced hereinabove. The employer's account shall not be charged at present. However, in the event the claimant's doctor, or doctors, determine the claimant's condition is work-related, and in the event the claimant satisfies the requirements set forth at Iowa Code section 96.5(1)(d) and Iowa Administrative Code rule 817-24.26(6)(a) referenced hereinabove, the employer's account will become subject to charge.

DECISION:

The September 29, 2022 (reference 03) decision is MODIFIED as follows. The claimant left the employment due to a medical issue. The leaving is deemed a voluntary quit under the applicable law. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. In the event the claimant's doctor, or doctors, determine the claimant's condition is work-related, the claimant may also requalify for benefits by satisfying the requirements set forth at Iowa Code section 96.5(1)(d) and Iowa Administrative Code rule 817-24.26(6)(a) referenced hereinabove. The employer's account shall not be charged at present. However, in the event the claimant's doctor, or doctors, determine the claimant's condition is work-related, and in the event the claimant satisfies the requirements set forth at Iowa Code section 96.5(1)(d) and Iowa Administrative Code rule 817-24.26(6)(a) referenced hereinabove, the employer's account will become subject to charge.



James E. Timberland
Administrative Law Judge

November 10, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.