

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OPHELIA DORBOR
Claimant

APPEAL NO. 09A-UI-16538-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 09/13/09
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated October 21, 2009, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 13, 2010. Claimant participated. She was represented by Jeffrey Flagg, Attorney at Law. Employer participated by Tony Luse, Employment Manager. The record consists of the testimony of Tony Luse; the testimony of Ophelia Dorbor; and Employer's Exhibits 1-5.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a pork producer. The claimant was hired as a full-time production worker at the employer's plant in Marshalltown, Iowa. The claimant's date of hire was June 23, 2008. The claimant's last day of work was January 22, 2009. The effective date of her separation of employment was February 16, 2009.

The employer has a written policy in its employee handbook that if a worker is unable to come to work, that a phone call must be made at least one-half hour before the start of the shift. Each employee badge has the number printed on it. The employer's policy also states that if an employee is absent for three days and there has been no-call, the employee is considered to have voluntarily quit his or her employment. The claimant was aware of this policy.

The claimant had a non-work-related accident on January 23, 2009. She had a doctor's excuse to be off work through February 11, 2009. The claimant was scheduled to work on February 12,

2009; February 13, 2009; and February 14, 2009. She did not show up for work and she did not call her employer to inform the employer that she was unable to work. There was no contact with the employer until sometime in August 2009, when she produced a note indicating that she was released to return to work on August 26, 2009.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

Iowa law states that if an employee is absent for three days without notice to the employer in violation of company rule, that the employee is presumed to have voluntarily quit his or her job without good cause attributable to the employer. In this case, the evidence established that the claimant was absent from work on three days and that she did not give notice to her employer about her absence. The employer had a company rule, of which the claimant was aware, that a three day no-call/no-show would be considered a voluntary quit. Accordingly, benefits are denied.

The next issue is overpayment of benefits. Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the **overpayment** deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

This matter is remanded to the Claims Section for a determination of the overpayment issue.

DECISION:

The decision of the representative dated October 21, 2009, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. This matter is remanded to the Claims Section for a determination of the overpayment issue.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css