

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

THOWAT D THOAL
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 20A-UI-01665-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/26/20
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 14, 2020, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on January 27, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on March 11, 2020. The claimant did not provide a telephone number for the hearing and did not participate. Vicky Cervantes represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.
Whether the claimant's voluntary quit was for good cause attributable to the employer.
Whether the claimant has been overpaid benefits.
Whether the claimant must repay benefits.
Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Thowat Thoal, was employed by Swift Pork Company, also known as JBS, as a full-time general laborer from December 16, 2019 and last performed work for the employer on February 3, 2020. The claimant's work hours were 6:30 a.m. to 3:00 p.m., Monday through Friday. The claimant was also required to work on Saturdays as needed. On February 4 and 5, 2020, the claimant contacted the employer's absence reporting telephone number to properly report that he would be absent from work for personal reasons. Under the employer's policy, the claimant was required to call in each day of the absence, unless he had given notice that he needed to commence a medical leave of absence. The claimant had given no notice that he

needed to commence a medical leave of absence. After the absences on February 4 and 5, the claimant was then absent without notice to the employer on February 6, 7, 8, 10, 11, 12, 13, 14, and 17, 2020. During the claimant's extended absence, the employer made multiple unsuccessful attempts to reach the claimant by telephone. The employer waited until February 17, 2020, to conclude that the employment was done.

The claimant established an original claim for benefits that was effective January 26, 2020 and received \$1,879.00 in benefits for five weeks between January 26, 2020 and February 29, 2020. Swift/JBS is not a base period employer in connection with the employment.

On February 13, 2020, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed the claimant's separation from the employment. The claimant did not answer when the deputy called his telephone number and did not participate in the fact-finding interview. The employer also did not participate in the fact-finding interview. The employer had appropriate notice of the fact-finding interview, but did not participate in the fact-finding interview. On February 12, 2020, the employer third-party representative of record, Equifax, provided notice to the Benefits Bureau that Vicky Cervantes would be the employer's representative at the fact-finding interview and provided a telephone number where Ms. Cervantes could be reached. At the time of the fact-finding interview, the deputy attempted to reach Ms. Cervantes at the telephone number provided, but Ms. Cervantes did not answer. Ms. Cervantes was aware of the scheduled fact-finding interview, but was at another meeting at the time of the fact-finding interview. Ms. Cervantes received a voicemail message from the deputy in which the deputy requested a return telephone call, but Ms. Cervantes did not return the call. The employer had not provided documentary evidence for the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) 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.

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 Admin. Code r. 871-24.25(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.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The quit was effective February 8, 2020. By that time, the claimant had been absent for three consecutive shifts without providing notice to the employer in violation of the employer's absence reporting policy. The claimant was in fact absent without notice to the employer for several additional days as the employer waited for him to make contact and before the employer finally concluded that the claimant would not be returning. The claimant has presented no evidence to support the notion that his voluntary separation from the employment was for good cause attributable to the employer. The evidence in the record does not indicate any such good cause. Nor does the evidence provide any indication that the employer discharged the claimant from the employment. 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. The employer's account shall not be charged for benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received \$1,879.00 in benefits for five weeks between January 26, 2020 and February 29, 2020, but this decision disqualifies the claimant for those benefits. The benefits the claimant received represent an overpayment of benefits. Because the claimant did not receive the benefits due to fraud or willful misrepresentation and because employer failed to participate in the finding interview, the claimant is not required to repay the overpaid benefits.

DECISION:

The February 14, 2020, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective February 8, 2020. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account will not be charged. The claimant is overpaid \$1,879.00 in benefits for five weeks between January 26, 2020 and February 29, 2020. The claimant is not required to repay the overpaid benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn