

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERALINE GAYE

Claimant

APPEAL NO. 09A-UI-06278-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY

Employer

OC: 03/08/09

Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jeraline Gaye filed a timely appeal from the April 16, 2009, reference 04, decision that denied benefits. After due notice was issued, a hearing was started on May 19, 2009 and was completed on June 11, 2009. Ms. Gay participated. Tony Luse, Employment Manager, represented the employer. Krahn-English Interpreter Laura Solo assisted on May 19. Krahn-English Interpreter Mark Nyemah assisted on June 11. Exhibit A was received into evidence.

ISSUE:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes that the claimant voluntarily quit by being absent without notifying the employer for three consecutive shifts in violation of the employer's policy.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 28, 2008, Jeraline Gaye commenced her employment at Swift & Company. Ms. Gaye was a full-time, second shift, production worker. Ms. Gaye's work hours were 2:00 to 10:00 p.m., Monday through Friday. Ms. Gaye also worked on Saturdays during peak production season.

Ms. Gaye last performed work for the employer on Friday, March 6, 2009. Ms. Gaye was then absent without notifying the employer on March 9, 10, 11, 12 and 13. In other words, Ms. Gaye was absent an entire workweek without notifying the employer. Ms. Gaye appeared for work on Monday, March 16. At that time, the employer notified Ms. Gaye that it deemed her a voluntary quit under its no-call/no-show policy.

The employer has a written attendance policy contained in an employee handbook. Ms. Gaye received a copy of the handbook at the beginning of her employment. The policy was also reviewed with Ms. Gaye at orientation. The absence notification policy required that Ms. Gaye telephone a designated message number at least 30 minutes before the scheduled start of her

shift if she needed to be absent. The designated number is set forth on each employee's ID badge. Ms. Gaye was familiar with the absence notification policy and had used it multiple times in the past, as recently March 2, 3, 4 and 5. The no-call/no-show policy indicated that the employer would deem an employee to have voluntarily quit the employment if the employee was absent for three consecutive shifts without notifying the employer.

On March 6, Ms. Gaye notified the employer that she had lost her ID badge. A human resources representative told Ms. Gaye that the employer would provide a replacement badge on Monday, March 9, when she appeared for work. Ms. Gaye did not report for work on March 9, or during that week, and therefore did not collect her new ID badge. Ms. Gaye made no effort at all to notify the employer on March 9 through 13 that she would be absent from the employment.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

When the separation from employment is based on the worker being absent for three days without giving notice to the employer in violation of company rule, the separation from the employment is deemed a voluntary quit without good cause attributable to the employer. See 871 IAC 24.25(4).

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.

The weight of the evidence indicates that Ms. Gaye was absent from work five consecutive days without notifying the employer. The weight of the evidence indicates that Ms. Gaye was well aware of the employer's absence notification policy and failed to comply with it for an entire workweek. Ms. Gaye's failure to notify the employer of the absences was in violation of the employer's no-call/no-show policy, which deemed three consecutive no-call/no-show absences a voluntary quit.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Gaye voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Gaye is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Gaye.

The outcome of this case would be the same if the administrative law judge had concluded that Ms. Gaye was discharged. The evidence establishes five consecutive unexcused absences. This would establish misconduct. See Iowa Code section 96.5(2)(a), 871 IAC 24.32(1)(a) and (7).

DECISION:

The Agency representatives April 16, 2009, reference 04, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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