

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR L HERSHEY
Claimant

APPEAL NO. 10A-UI-01812-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 01/03/10
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Victor Hershey filed an appeal from a representative's decision dated January 27, 2010, reference 01, which denied benefits based on his separation from Swift & Company. After due notice was issued, a hearing was held by telephone on March 15, 2010. Mr. Hershey participated personally. The employer participated by Tonya Box, Human Resources.

ISSUE:

At issue in this matter is whether Mr. Hershey was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hershey began working for Swift on January 23, 1996 and last performed services on August 10, 2009. He was a full-time laborer. He properly reported the intent to be absent due to illness from August 11 through August 28, 2009. He was absent without notice on August 29, 31, and September 1. He had not submitted any medical statement indicating he needed to be absent for an extended period of time. Although he had picked up forms to take a medical leave, the forms were never returned to the employer.

The employer has a written work rule, of which Mr. Hershey was aware, which provides that three consecutive absences will be considered a voluntary quit. He did not plan to return to the employment for several reasons. He planned to quit because it took him one hour and 20 minutes to drive from his home in Stanhope to the workplace in Marshalltown. He moved to Stanhope approximately two years prior to his separation. He also planned to quit because he urinated on himself once because he was not allowed to have a bathroom break. The incident occurred over two years before his separation. He did not complain to anyone about the matter. He also quit because he cut his finger on one occasion within the last two years. Finally, he planned to quit because his car had been towed from employee parking on one occasion because he was parked outside the lines. This occurred on only one occasion and was within the last two years of his employment.

Although he had been absent since August 11, Mr. Hershey was not in any danger of losing his job due to attendance. It takes ten attendance points to discharge an individual. Prior to August 11, Hershey had only five points. Because the absences beginning on that date represented a continuous spell of illness, it would only have resulted in one attendance point. If it had been covered by medical leave, it may not have resulted in any points.

REASONING AND CONCLUSIONS OF LAW:

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). An individual who is absent for three consecutive shifts without notice in violation of a known work rule is presumed to have left employment without good cause attributable to the employer. 871 IAC 24.25(4). In an effort to overcome the presumption, Mr. Hershey has offered various reasons he quit.

There is no doubt but that Mr. Hershey had a considerable distance to travel to get to and from work. However, it was his choice to move to a location that was further away from work. The employer had no control over where he chose to live. The employer did not dispute that his car was towed on one occasion, that he was denied permission to go to the bathroom on one occasion, or that he cut his finger on one occasion. He never complained that he was routinely denied permission to use the bathroom as needed and the administrative law judge is not inclined to believe this was the case. The refusal to allow a bathroom break on one occasion cannot support a decision to quit two years later. The same is true of the incident involving his car being towed and his finger being cut. In short, Mr. Hershey failed to establish any current cause attributable to the employer for quitting.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Mr. Hershey voluntarily quit his employment with Swift for no good cause attributable to the employer. As such, benefits are denied.

DECISION:

The representative's decision dated January 27, 2010, reference 01, is hereby affirmed. Mr. Hershey quit his employment for no good cause attributable to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs