

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARTA G SALAZAR
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 17A-UI-04962-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/16/17
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code §96.5(1)d – Voluntary Leaving/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Marta G. Salazar (claimant) filed an appeal from the May 2, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit due to a non-work related illness or injury, which is not a good cause reason attributable to Swift Pork Company (employer). The parties were properly notified about the hearing. A telephone hearing was held on May 26, 2017. The claimant participated. The employer's witness's telephone line was busy when called at the start of the hearing and she did not call to participate while the record was open. Spanish interpretation was provided by Louis (employee number 10552) from CTS Language Link. The claimant referenced documents during the hearing, but did not have them in her possession or provide them to the Appeals Bureau as instructed on the back of the hearing notice before the hearing. She also did not request a subpoena as instructed if she was unable to obtain the documents from the employer. No exhibits were received into the record.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a production worker on the kill floor beginning on August 25, 2016, and was separated from employment on March 8, 2017, when she quit. The claimant developed back pain in November 2016. She notified the employer who continued to have her work in her normal shift. The claimant saw her regular doctor and learned the pain was due to a bowel obstruction. The claimant provided documentation to the employer that she would need to take additional bathroom breaks due to her medications. The claimant did not feel the employer adequately met her doctor's request.

On March 8, 2017, the claimant walked off the line. She told the employer she could not work because she was in too much pain. The claimant's doctor had told her that it was her decision

whether she could work. The claimant has not yet recovered and is still in too much pain to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant separated from employment without good cause attributable to the employer. Benefits are denied.

Iowa Code § 96.5(1)d 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. 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 Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant quit work due to a non-work related injury. She has argued that her condition and pain was work-related; however, she has not provided competent medical information indicating the condition was work related. The claimant initially stated her doctor left the decision to quit up to her and later changed her testimony stating that the doctor told her to quit. When looking

at the claimant's description of her last day worked, it seems more plausible that the doctor left the decision to quit to the claimant as the claimant did not quit following a doctor's appointment. As the claimant did not leave because a licensed and practicing physician instructed her to, the claimant voluntarily quit without good cause attributable to the employer. While the claimant's decision to leave the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The May 2, 2017, reference 01, decision is affirmed. The claimant's separation was without good cause attributable to the employer. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn