

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**OMER A OMER**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 18A-UI-06576-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/06/18**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Admin. Code r. 871-24(10) – Participation in Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the June 5, 2018 (reference 02) unemployment insurance decision that allowed benefits to claimant. The parties were properly notified of the hearing. A telephone hearing was held on July 2, 2018. The claimant, Omer A. Omer, did not participate. The employer, Swift Pork Company, participated through witness Vicky Cervantes. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as a general laborer. Claimant began working for this employer on February 27, 2017 and his last day physically worked on the job was April 6, 2018.

Employer has a written policy that states three consecutive no call no shows will be considered a voluntary quit by employees. Claimant received a copy of this written policy when he became employed by the employer. Claimant was absent to work for his scheduled shifts on April 7, 2018; April 9, 2018 and April 10, 2018. Claimant was considered to have voluntarily quit his job pursuant to the employer's written policy. Claimant never contacted the employer after April 6, 2018 and did not report why he did not return to work.

Claimant has been paid \$0.00 in unemployment insurance benefits since his effective date of filing his initial claim on May 6, 2018 due to a lock on his claim. Employer did participate in the fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

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.

In this case, claimant had an intention to quit and carried out that intention by being absent for three days without giving notice to the employer in violation of a company rule. Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

Claimant has not been paid unemployment insurance benefits since filing his initial claim for benefits effective May 6, 2018. As such, the overpayment issue is moot. The employer's account shall not be charged.

**DECISION:**

The June 5, 2018 (reference 02) unemployment insurance decision is reversed. Claimant voluntarily quit his employment without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs