

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

DAVID W JOHNSON  
103 BYRON ST  
MARSHALLTOWN IA 50158

SWIFT & COMPANY  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 06A-UI-01088-DT  
OC: 01/01/06 R: 02  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

David W. Johnson (claimant) appealed a representative's January 27, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 16, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on August 23, 2005. Starting about one week after he started his employment, he worked full time as a laborer in the employer's barn on a second shift schedule. In November 2005, the employer discovered that he had not formally been awarded the barn position and did not "own" it, so he was moved to a position on the kill floor. The claimant is left handed and had difficulty in doing the required tasks quickly. He worked in the position about one week before being placed on medical leave for carpal tunnel. He was off the rest of November and all of December 2005, and was released to return to work January 2, 2006.

On several occasions he asked to be returned to his position in the barn, but his request was denied. On January 4, 2006 after again being required to work on the kill floor and having his request to return to the barn be denied, he quit.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit for good cause attributable to the employer.

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.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist, nor is it pertinent that the claimant remained an "at will" employee. The substantial change in the claimant's duties which had been implemented

was a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The representative's January 27, 2006 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/s