

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LANCE C MILLER
Claimant

APPEAL NO. 14A-UI-01161-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK CO
Employer

**OC: 04/14/13
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

The employer, Swift, filed an appeal from a decision dated January 24, 2014, reference 02. The decision allowed benefits to the claimant, Lance Miller. After due notice was issued a hearing was held by telephone conference call on February 24, 2014. The claimant participated on his own behalf. The employer participated by Human Resources Manager Aureliano Diaz.

ISSUES:

The issues are whether the claimant quit work with good cause attributable to the employer, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Lance Miller was employed by Swift from May 20, 2013 until December 30, 2013 as a full -time DC mechanic. He received the employee handbook at the time of hire. One of the attendance policies considers three days no-call/no-show to work to be a voluntary quit.

Mr. Miller was being scheduled for mandatory overtime several weeks in a row in December 2013. He went to his union representative who met with the employer about the complaint. The employer acknowledged the problem but that time of the year many people were on vacation for the holidays and there was also a shortage of personnel. As the person with the least seniority Mr. Miller was scheduled more often.

Before the union representative could discuss the outcome of the meeting with Mr. Miller, he decided he was working too many hours and was no-call/no-show to work on December 28, 29, and 30, 2013. The employer informed him on December 31, 2013, he was a voluntary quit under the company policies.

Lance Miller has received unemployment benefits since filing an additional claim with an effective date of January 5, 2014. The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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 24.25(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.

The claimant is considered a voluntary quit without good cause attributable to the employer under the provisions of the above Administrative Code section. He may have been displeased with the overtime but he was not excused from showing up to work as scheduled.

41C-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.

DECISION:

The unemployment insurance decision dated January 24, 2014, reference 02, is reversed. Lance Miller is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. He is overpaid \$2,160.00 in benefits. He is not required to repay the overpayment and the employer is charged for the amount of the overpayment because the employer failed to participate in the fact-finding interview.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs