

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN A JOYA
Claimant

APPEAL NO. 10A-UI-05643-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 02/28/10
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available
871 IAC 24.22j(1),(2),(3) – Leave of Absence

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 6, 2010, reference 02, that held he was granted a leave of absence, which is a voluntary period of unemployment, and that denied benefits effective February 28, 2010. A telephone hearing was held on May 26, 2010. The claimant, with the assistance of an interpreter, Anna Pottebaum, participated. Joe Nevell, Training Manager, participated for the employer.

ISSUES:

Whether the claimant voluntarily left work with good cause attributable to the employer.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer as full-time production worker from January 7, 1997 to December 10, 2009. The claimant was hospitalized for non-job-related respiratory failure on December 11. The claimant's doctor restricted him from full-time employment for 13 weeks. The claimant's doctor has not released him to return to work. The employer is holding the claimant's job open.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes the claimant voluntarily left work without good cause attributable to his employer due to a non-job-related illness on December 10, 2009, and he has not been released to return to full-time work by his physician.

The claimant provided medical information with his appeal. The information includes a doctor statement that his respiratory failure and hospitalization on December 11, 2009 was not

job-related. The doctor has placed a restriction that the claimant is to work less than full-time. The claimant has not been released to return to work, and his employer is holding his job open.

Although the claimant is contending his illness is job-related (cold working environment), the medical information he provided does not support this contention. Since his employment separation on December 11 is due to a non-job-related illness and he has not been given a doctor's unrestricted release to return to work, he is not able and available to perform his job duties until it is issued.

DECISION:

The department decision dated April 6, 2010, reference 02, is affirmed. The claimant voluntarily left work without good cause attributable to his employer on December 10, 2009, and he has not been given an unrestricted release to return to work. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw