

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MAKUAC K DHAL**  
Claimant

**APPEAL NO. 14R-UI-04755-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 01/19/14**  
**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Recovery of Overpayment of Benefits, Employer Chargeability for  
Non participation at Fact Finding

**STATEMENT OF THE CASE:**

This matter was before the administrative law judge based on an Employment Appeal Board remand in Hearing Number 14B-UI-01927. The Board had concluded that the claimant was denied an opportunity to participate in the March 20, 2014, appeal hearing in 14A-UI-01927-MT due to lack of notice of the hearing. The employer had filed an appeal from the February 10, 2014, reference 01, that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits. After due notice, a hearing was scheduled for May 28, 2014. Luis Meza represented the employer. Claimant Makuac Dhal provided a telephone number for the hearing, but was not available at that number at the time of the hearing. The administrative law judge made two attempts to reach Mr. Dhal for the hearing at the number he had provided. On each attempt, the Clear 2 There dialing/recording system indicated that the claimant's number rang for an extensive time before the system provided a message indicating that the claimant was not answering. There was no answering machine attached to the claimant's phone.

Because the claimant did not appear for the May 28, 2014 hearing after receiving appropriate notice, and because the employer presented testimony and other evidence at the time of the March 20, 2014 hearing, the administrative law judge concludes it is appropriate to adopt the March 20, 2014 hearing record made in Appeal Number 14A-UI-01927-MT and the decision entered by Administrative Law Judge Marlon Mormann in that matter on March 20, 2014. On March 20, 2014, Aureliano Diaz, Human Resource Manager, had represented the employer and Exhibit One was admitted into evidence.

**ISSUES:**

The issues in this matter are whether the claimant quit for good cause attributable to the employer, whether claimant is overpaid unemployment insurance benefits and whether employer's account is charged due to non participation at fact finding.

### **FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 4, 2013. Claimant was a no-call absence for three days in a row ending December 18, 2013. Claimant did not return to ask for his job back nor tell employer why he missed work. Employer informed claimant of the policy that deems three no-call absences as a voluntary quit.

Employer did not participate at the fact-finding interview. Employer did not present sufficient evidence at fact finding that if unrebutted would have allowed employer to win.

There is no evidence that proves claimant received benefits due to fraud or willful misrepresentation.

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

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because he did not call or report for three days. This is a quit without good cause pursuant to policy. Benefits withheld.

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 next issue concerns an overpayment of unemployment insurance benefits and charges to employer's account.

Fraud or willful misrepresentation by the claimant means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment benefits. See 871 IAC 24.10(4).

Employer participation would include testimony from a firsthand witness or the name and number of a firsthand witness who may be contacted for rebuttal. It could also include a detailed written statement or documents that provide specific, factual information regarding the separation. At a minimum, the employer's information regarding a discharge must include the dates, particular circumstances and the act or omissions of the claimant. A voluntary separation should include the stated reason for the quit. See 871 IAC 24.10(1)

Statements or general conclusions without supporting detailed factual information and/or information submitted after the fact-finding interview are not considered participation within the meaning of the statute. See 871 IAC 24.10(1).

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

Claimant's overpayment is waived because employer did not participate at fact finding.

Employer's account shall be charged because employer did not meaningfully participate at fact finding. This matter is remanded to determine the amount of charges made to employer's account.

**DECISION:**

The decision of the representative dated February 10, 2014, reference 01, is reversed and remanded for determination of employer's account charges. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant's overpayment is waived.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs