

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAKUAC K DHAL
Claimant

APPEAL NO. 14A-UI-01927-MT

**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:

Employer filed an appeal from a decision of a representative dated February 10, 2014, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 20, 2014. Employer participated by Aureliano Diaz, Human Resource Manager. Claimant failed to respond to the hearing notice and did not participate. 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.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css