

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHUANA R HATCHITT**  
Claimant

**APPEAL NO. 08A-UI-04604-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 04/13/08 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated May 5, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 29, 2008. Although the claimant submitted a telephone number she was not available at the time of hearing. Employer participated by Mr. Tony Luse, Employment Manager. Employer's Exhibits One and Two and Claimant's Exhibit A were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with the work and whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from March 26, 2007 until February 5, 2008. Ms. Hatchitt was employed as a full-time production worker and was paid by the hour. The claimant discontinued reporting for scheduled work after February 5, 2008. Ms. Hatchitt had failed to report or to provide notification to the employer of her impending absence on February 1 and February 2, 2008. The claimant worked on February 4, 2008 and left work early on February 5, 2008. When the claimant failed to report for scheduled work or to provide any notification to her employer regarding her impending absences on February 6, February 7, and February 8, 2008, the employer reasonably concluded that the claimant had voluntarily quit employment with the company. A substantial period of time later Ms. Hatchitt indicated to the company that she had not reported because she was sick. The claimant provided no reason for failing to call in as required by company policy. Ms. Hatchitt was aware that employees are expected to call in to report impending absences prior to the beginning of their work shift each day that they are going to be absent.

## 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.

As the evidence in the record establishes the claimant failed to report for scheduled work for three or more consecutive workdays without giving notice in violation of company rules. The administrative law judge must conclude that the claimant voluntarily quit employment for reasons that were not attributable to the employer. The claimant was aware of the rule but failed to follow it. The employer was reasonable in concluding the claimant had quit work when she failed to report for scheduled work for an extended period of time and provided no notification or reason for failing to provide notification. The claimant quit for reasons not attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$2,029.00.

**DECISION:**

The representative's decision dated May 5, 2008, reference 01, is hereby reversed. Claimant voluntarily quit work for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing that she is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$2,029.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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