

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOY J KENT
Claimant

APPEAL NO: 09A-UI-09362-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 05/17/09
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
871 IAC 24.26(1) – Job Change

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 17, 2009, reference 01 that held the claimant voluntarily quit employment with good cause attributable to the employer due to a job change on March 14, 2009, and benefits are allowed. A telephone hearing was held on July 16, 2009. The claimant participated. Tony Luse, Employment Manager, participated for the employer. Employer Exhibits 1 and 2 were received as evidence.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: The claimant was hired by the employer as a full-time maintenance mechanic on December 4, 2006. The claimant worked the maintenance job until March 11, 2009, and his last rate of pay for this work was \$16.00 an hour.

The claimant's supervisor questioned him about where he was for forty-five minutes during his work shift on March 10 due to some unnoticed missing fingers (chain for moving hogs) that caused the employer down-time to repair. The employer did not accept the claimant's explanation and later that day, a union steward got involved. The steward told the claimant he had a choice to accept a production worker position on the kill floor at \$12.60 an hour or be terminated. The claimant agreed to try the position offered.

The claimant worked a few days and found the job was too hard for him to do. The claimant went to human resources and signed a form on March 14 that he was quitting employment, because the job was too hard. Employment Manager Luse was not personally involved in the management-union discussions leading to the claimant accepting the kill floor position.

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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The administrative law judge concludes that the claimant voluntarily quit employment with good cause attributable to the employer effective March 14, 2009 due to a substantial change in his job position.

The claimant offered credible testimony that the employer witness could not refute that it was either change jobs or be terminated. In effect, the employer disciplined the claimant for the down-time on March 10 by giving him the choice to accept a lesser paying job that he had never performed or face termination. The claimant gave the position change alternative a "try," but working it for a few days does not change his contract for hire. Moving the claimant to the kill floor and the claimant accepting the job was not voluntary, and it is a substantial job change that constitutes a good cause attributable to the employer for quitting employment.

DECISION:

The department decision dated June 17, 2009, reference 01 is affirmed. The claimant voluntarily quit with good cause attributable to the employer on March 14, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css