

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

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MARTIN SILVA

Claimant,

and

SWIFT & COMPANY

Employer.

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HEARING NUMBER: 09B-UI-08199

EMPLOYMENT APPEAL BOARD  
DECISION

N O T I C E

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-1**

D E C I S I O N

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The employer appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Board modifies the conclusions of law to include the following discussion:

Iowa Code §96.5(1)(c) states:

An individual shall be disqualified for benefits:

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:

c. The individual left employment for the **necessary and sole purpose of taking care of a member of the individual's immediate family** who was then **injured** or ill, and if after said member of the family sufficiently recovered, the individual **immediately returned** to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

“Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law.” 871 IAC 24.26(8).

We have found, by adopting the findings of the Administrative Law Judge, that the Claimant left his employment for the necessary and sole purpose of taking care of his mother. Since a mother is, by law and by nature, perhaps the most immediate of family members any quit would fall under the protection of Iowa Code §96.5(1)(c). Finally the Claimant was not required to return and offer his services once his mother's illness was resolved since the employment has already been terminated by the Employer. *See Porazil v. IWD*, 2003 WL 22016794, No. 3-408 (Iowa Ct. App. Aug. 27, 2003).

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John A. Peno

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Elizabeth L. Seiser

RRA/ss

#### DISSENTING OPINION OF MONIQUE KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would reverse the decision of the administrative law judge. The claimant had correctly used his FMLA time in the past yet in this instance he failed to submit the appropriate documentation to apply for FMLA leave. (Tran at p. 18-19). The Claimant failed to submit any documentation to the employer regarding his mother's illness. (Tran at p. 10 ln. 23-28). He was informed that if he chose to leave, he would no longer have a job. (Tran at p. 8 ln. 4-5). Since he did not have enough vacation time to cover the leave I believe that the claimant resigned with no compelling reasons attributable to the employer. Benefits should be denied.

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Monique F. Kuester

RRA/ss