

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CRISTINA TORO DE MARAVILLA
601 – 15TH AVE
MARSHALLTOWN IA 50158

SWIFT & COMPANY
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 05A-UI-00830-DT
OC: 01/02/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-c – Voluntary Leaving/Care of Ill or Injured Family Member

STATEMENT OF THE CASE:

Cristina Toro de Maravilla (claimant) appealed a representative's January 24, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 10, 2005. The claimant participated in the hearing. Tonya Box appeared on the employer's behalf. Rosemary Paramo-Ricoy served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on April 2, 2002. She worked full time as a laborer in the employer's Marshalltown, Iowa pork processing facility. Her last day of work was December 3, 2004.

On December 4, the claimant learned that her mother in Mexico was having surgery for removal of a kidney. She called the employer and left a message that she would be gone to be with her mother. The claimant flew to Mexico that same day and arrived in time for her mother's surgery. There was at least one other intervening communication between the claimant's husband and the employer on the claimant's behalf, but on December 9 the claimant called from Mexico and spoke to the employer's Spanish-speaking human resources representative, a Glenda. Glenda told the claimant that the employer had approved the claimant to be gone for one week, but that she needed to be back to work on December 13. The claimant replied that her mother was still in the hospital and very ill, and that if something else happened, the claimant could not afford to fly back to Iowa and then return to Mexico again if there was a problem. Glenda maintained that the claimant needed to be back December 13, and the claimant insisted she could not.

On December 12, the claimant's mother's doctor sent a fax to the employer indicating that the claimant's 65-year-old mother had emergency surgery on December 5 for a left renal abscess and that she currently was being hospitalized for her care and control. The message was being offered as a justification for the claimant's absence from Iowa. The message did not indicate any role that the claimant was needed to play in the mother's care or how long the claimant would be gone.

The claimant had other brothers and sisters who were also with their mother at the time of the surgery; however, after the surgery, each of them left because they needed to get back to their employment so they would not lose their jobs. The claimant determined that she would stay because she had not seen her mother for a long time and because she was concerned about the expense of flying back and forth from Iowa should there be further complications. The claimant had another sister in Mexico who was available but had children in school, and so did not wish to come and be with their mother until after the children were out of school after Christmas.

The claimant's mother was released from the hospital on December 19. The claimant assisted in taking her mother back to the hospital daily for that week for a recheck. The claimant did not return to Iowa until January 4, 2005. She contacted the employer on January 5, 2005, but was refused the opportunity to return to work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code section 96.5-1-c 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. 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.

871 IAC 24.25 provides that, 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. However, even without a direct statement of quitting, an intent to quit can be inferred in certain situations. For example, where an employee is absent without the employer's approval for over ten consecutive days, even though due to good person reasons, it is still deemed to be a voluntary quit. 871 IAC 24.25(20). Also, as in this case, where the employer has agreed to approve a period of a leave of absence and the claimant does not return at the end of the time agreed to by the employer, it is deemed to be a voluntary quit. 871 IAC 24.22(2)j(2). The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2.

871 IAC 24.26 provides in pertinent part:

The following are reasons for a claimant leaving employment with good cause attributable to the employer: . . .

(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. 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. Members of the immediate family must be related by blood or by marriage.

The claimant did not demonstrate that she left for the "necessary and sole purpose of taking care of" her mother. There is no indication that she had a role in her mother's actual care until after her mother was released on December 19. Further, since there were other siblings, it is not clear that it was the claimant's staying to provide care that was "necessary." At least one of the claimant's other reasons for staying in Mexico was because it had been so long since she had seen her mother, as well as the travel expense. Finally, at the latest, the claimant's sister was available to provide any necessary care as of December 26, yet the claimant did not return to Iowa until January 4, so she did not "immediately return." While under the circumstances the claimant's choices were reasonable for her to make, they were personal reasons not attributable to the employer. Benefits are denied.

DECISION:

The representative's January 14, 2005 decision (reference 01) is affirmed. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount.

ld/pjs