

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN NICODEMUS
Claimant

APPEAL NO. 09A-UI-02525-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 01/18/09
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

John Nicodemus (claimant) appealed an unemployment insurance decision dated February 13, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was considered to have voluntarily quit his employment with Swift & Company (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 12, 2009. The claimant participated in the hearing. The employer participated through Aaron Vawter, Human Resources Coordinator. 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.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time translator on August 20, 2007 and went to the Quality Assurance Department on November 3, 2008. The employer's attendance policy provides an employee is considered a voluntary quit if he is a no-call/no-show for three consecutive workdays. The claimant was a no-call/no-show for three days ending on January 7, 2009 and was considered to have voluntarily quit his employment.

The claimant was actually a no-call/no-show through January 8, 2009. He contends he called in to report his absences, but the employer has no record of him calling in. The claimant was absent because his wife was ill. He testified that he brought in a doctor's excuse after the fact on January 9, 2009, but his employment had already been severed at that point.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment

insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

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 § 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 § 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 claimant was deemed a voluntary quit on January 7, 2009 after three days of no-call/no-show. Rule 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. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by not calling or reporting to work for three consecutive work days.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated February 13, 2009, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw