

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

EDER A CRUZ  
703 S 12<sup>TH</sup> AVE APT 2  
MARSHALLTOWN IA 50158

SWIFT & COMPANY  
C/O EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 04A-UI-11638-HT  
OC: 10/03/04 R: 02  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Quit  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Swift and Company (Swift), filed an appeal from a decision dated October 19, 2004, reference 01. The decision allowed benefits to the claimant, Eder Cruz. After due notice was issued a hearing was held by telephone conference call on November 23, 2004. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Manager Jeremy Cook.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Eder Cruz was employed by Swift from March 28 until August 18, 2004. He was a full-time quality assurance technician.

On August 3, 2004, the claimant talked to Human Resources Manager Jeremy Cook and asked to take time off to visit his mother. She lived in California and was very ill. Although Mr. Cruz was not eligible for FMLA, and did not have enough vacation or sick leave available, the time off was granted. However, Mr. Cook told the claimant he would have to have documentation from a physician verifying the fact his mother was seriously ill. The claimant agreed to provide it.

Mr. Cruz returned to Iowa and called the employer on August 16, 2004. The human resources manager granted his request to take that night off because he had just driven a long distance. The claimant assured Mr. Cook he had the necessary documents to verify his absence, however, when he reported to work on August 17, 2004, he did not have the documents. He assured the employer he would get them the next night, but when he reported for work on August 18, 2004, he turned in his equipment and said he was quitting because he did not have the documentation.

Eder Cruz has received unemployment benefits since filing a claim with an effective date of October 3, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

The claimant quit because he was afraid he would be discharged for failing to have the necessary documentation to verify his absence. It is possible he would have been discharged but the employer had not yet made that decision. The claimant's belief he was going to be is not sufficient to establish good cause attributable to the employer quitting. He is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 19, 2004, reference 01, is reversed. Eder Cruz is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$144.00.

bgh/kjf