

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ZEWDITU DINKU
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 22A-UI-00816-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/26/21
Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Zewditu Dinku, filed a timely appeal from the November 24, 2021, reference 01, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on October 24, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 31, 2022. The claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and WAGE-C.

ISSUE:

Whether the claimant voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Zewditu Dinku, was employed by Swift Pork Company, also known as JBS, as a full-time line production worker from 2015 until October 24, 2020, when she voluntarily quit. The claimant quit due to personal health issues and due to a desire to care for her newborn child. During the last months of the employment, the claimant was pregnant. During the claimant's pregnancy, the claimant's doctor recommended that the claimant no longer work in a particular production position that brought the claimant's abdomen into contact with a table edge. At the claimant's request and based on the medical restriction, the employer moved the claimant to lighter work that she could perform standing or seated and that did not require her abdomen to come in contact with the work surface. The claimant continued to perform that work until the claimant elected to separate from the employment. A doctor did not advise the claimant to leave the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Where a claimant leaves employment due to a lack of childcare or due to family responsibilities, the quit is presumed to be without good cause attributable to the employer. Iowa Admin. Code Rules 871-24.25(17) and (23).

The evidence in the record establishes a voluntary quit on October 24, 2021 without good cause attributable to the employer. The claimant left the employment due to non-work related personal health issues and due to a desire to be with her newborn child. The claimant's decision to leave the employment was not based on advice from a doctor. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The November 24, 2021, reference 01, decision is affirmed. The claimant voluntarily quit the employment on October 24, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

February 18, 2022
Decision Dated and Mailed

jet/mh

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

Individuals who do not qualify for regular unemployment insurance benefits, but who were unemployed between February 2, 2020 and June 12, 2021 for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** To apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals>. On that webpage, go to the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The reference number is 100816, the pin number you used for the appeal hearing.**