

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

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SWIFT & COMPANY
c/o EMPLOYERS UNITY INC
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Appeal Number: 06A-UI-01231-SWT
OC: 01/01/06 R: 02
Claimant: Appellant (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, 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 for Ill Family Member

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 31, 2006, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on February 22, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistant of interpreter. Ike Rocha. Jeremy Cook participated in the hearing on behalf of the employer with a witness, Rosaro Alvarez.

FINDINGS OF FACT:

The claimant worked full time for the employer from September 4, 2002, to November 3, 2005. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be considered to have quit employment after three days of absence without notice to the employer.

The claimant's father who lives in Mexico needed the claimant to care for him due to a serious illness for which he was receiving medical treatment. The claimant applied for and was granted a vacation and a personal leave of absence from November 4 to December 5, 2005. He was also given a medical certificate dated November 4, 2005, that had to be returned to the employer within 15 days for him to receive time off under the Family and Medical Leave Act (FMLA).

The claimant traveled to Mexico to care for his father. He drove his father to medical appointments and provided care to him. On November 15, 2005, his father's doctor completed a medical certification that stated that the claimant's father suffered from serious medical conditions that required the claimant's care for approximately two months. The claimant faxed the doctor's certification to the employer's fax number listed on the form sometime around November 15, 2005. He believed he had done what was required to obtain FMLA leave beyond December 5, 2005.

The employer considered the claimant absent without notice to the employer on December 5, 6, and 7, 2005, and therefore to have voluntarily quit employment under its policy. The claimant called on December 10, 2005, to make sure the employer had gotten the fax and to check on his job. He was informed that his employment was terminated.

The claimant returned to his home in Marshalltown on January 3, 2006, he called the employer and again informed that his employment had been terminated. The claimant did not intend to quit his employment.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof.

Although there is a unemployment insurance rule stating that a claimant will be presumed to have quit employment after three days of absence without notice to the employer in violation of a company rule (871 IAC 24.25), this is a rebuttable presumption. In this case, the evidence rebuts this presumption and supports the finding that the claimant never intended to quit. Treating the separation as a discharge, the claimant was discharged after he faxed a doctor's statement to the employer certifying that he need to be off work for two months to care for his father who was seriously ill. No misconduct as defined by 871 IAC 24.32(1) of the unemployment insurance rules been established in this case.

Even if the separation from employment is treated as a voluntary quit, the Iowa Code Section 96.5-1-c, states that no disqualification shall be imposed on a claimant who leaves employment to take care of a member of the claimant's immediate family who was injured or ill, provided that the claimant immediately offers to return to work after the family member recovers but the employer has no work available. The claimant has satisfied these requirements, and therefore, would be eligible for unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated January 31, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/s