

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NOE V TORRES**

Claimant

**APPEAL NO. 17A-UI-11559-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 10/15/17**

**Claimant: Appellant (5)**

Iowa Code Section 96.5(1)(d) – Voluntary Quit Due to Non-Work Related Medical Condition

**STATEMENT OF THE CASE:**

Noe Torres filed an appeal from the October 31, 2017, reference 01, decision that disqualified him for benefits and that stated the employer's account would not be charged, based on the Benefits Bureau deputy's conclusion that Mr. Torres voluntarily quit on September 28, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 21, 2017. Mr. Torres participated. The employer was not available at the telephone number the employer registered for the hearing and did not participate. Spanish-English interpreter Christian Castano of CTS Language Link assisted with the hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-11560-JTT. Exhibits A through D and Department Exhibits D-1, D-2 and D-3 were received into evidence.

**ISSUES:**

Whether Mr. Torres separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Noe Torres was employed by Swift Pork Company, a/k/a JBS, as a full-time production worker on the kill floor from January 2017 and last performed work for the employer on August 30, 2017. On that day, Mr. Torres suffered a stroke at work. Mr. Torres was transported to the University of Iowa Hospitals and Clinics (UIHC) and remained in the hospital until September 6, 2017, when he was discharged to home. While Mr. Torres was hospitalized, he received medical evaluation and treatment from the UIHC Department of Neurology. At the time Mr. Torres was discharged from the hospital, he was not released to return to work. Instead, a neurology resident referred Mr. Torres for occupational and/or physical therapy services and advised in writing that Mr. Torres would not be released to return to work until he was cleared to do so by an occupational therapist, physical therapist, or neurologist. Following Mr. Torres' discharge from the hospital, he returned to the employer with a medical note, dated September 5, 2017, from the neurology resident that provided the above information. While Mr. Torres asserts he was discharged from the employment, he was actually never released to return to the employment following his stroke. Mr. Torres has not recovered from his illness, has not

returned to the employer with medical certification of his recovery, and has not offered to return to return to the employer upon recovering.

### **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.

Workforce Development rule 817 IAC 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.

The evidence in the record establishes that Mr. Torres left the employment effective August 30, 2017, due to a non-work related medical condition that necessitated his separation from the employment. Mr. Torres left the employment upon the advice of a licensed and practicing physician. Mr. Torres has not recovered the illness that necessitated his separation from the employment. Mr. Torres has not returned to the employer with medical certification that he has recovered and to offer to return to the employment following such recovery. The separation is deemed a voluntarily quit without good cause attributable to the employer. Accordingly, Mr. Torres is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Torres must meet all other eligibility requirements. The employer's account shall not be charged. Mr. Torres can also requalify for benefits by recovering from the illness that took him off work, returning to the employer with medical certification of his recovery and to request return to the employment. If at that time the employer does not make work available, the separation will become for good cause attributable to the employer, Mr. Torres would become eligible for benefits provided he meets all other eligibility requirements, and the employer's account would become subject to charge.

**DECISION:**

The October 31, 2017, reference 01, decision is modified as follows. The claimant voluntarily quit, effective August 30, 2017, due to a non-work related medical condition and upon the advice of a licensed and practicing physician. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged. The claimant can also requalify for benefits by recovering from the illness that took him off work, returning to the employer with medical certification of his recovery and to request return to the employment. If at that time, the employer does not make work available, the separation will become for good cause attributable to the employer, the claimant would become eligible for benefits provided he meets all other eligibility requirements, and the employer's account would become subject to charge.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs