

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L HUSTON
Claimant

APPEAL NO. 09A-UI-04960-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**Original Claim: 02/22/09
Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 17, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 30, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Tony Luse participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from August 25, 2008, to January 27, 2009. 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 were considered to have abandoned their jobs after three days of unreported absence.

The claimant called in sick each day from January 28 to February 13. Because the claimant had missed work for an extended period of time, she called on February 13 to see if she still had a job. She was told that she would have to speak to the employment manager, Tony Luse. She left two messages for Luse on February 13, and when she did not receive a return call, she assumed she had been discharged and did not report back to work or contact the employer again.

After three days of unreported absence on February 16, 17, and 18, the employer considered the claimant to have abandoned her job. If she had reported to work, she would not have been discharged and at most would have been placed on a 90-day contract.

The claimant filed for and received a total of \$2,808.00 in unemployment insurance benefits for the weeks between February 22 and April 25, 2009

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The claimant was never discharged. She stopped reporting to work because she mistakenly believed she was going to be fired because she had ten points. She did not check to see what would have happened if she had come back to work. Her assumption that she was fired based on her not receiving a return call was unreasonable.

The unemployment insurance rules state that a claimant absent for three days without giving notice to the employer in violation of company rule is presumed to have quit employment without good cause attributable to the employer. 871 IAC 24.25(4). This rule applies to this case. The claimant is deemed to have voluntarily quit employment without good cause.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated March 17, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw