

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN P BRIONES

Claimant

APPEAL NO. 08A-UI-02810-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT TRANSPORTATION COMPANY

Employer

**OC: 01/27/08 R: 04
Claimant: Respondent (2)**

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Swift Transportation Company filed a timely appeal from the March 12, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 7, 2008. Claimant Juan Briones did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Roberta Rosenbaum of Employer's Advantage represented the employer and presented testimony through Christina Wilson, Driver Manager for Swift Transportation Company. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. At the employer's request, the administrative law judge took official notice of the Agency's administrative record of documents submitted for, or generated in connection with, the fact-finding interview. Exhibit One was received into evidence.

ISSUES:

Whether the separation from the employment was initiated by the claimant or the employer. The administrative law judge concludes that the claimant voluntarily quit.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Juan Briones commenced his employment with Swift Transportation Company on July 27, 2007 and worked as a full-time over-the-road truck driver. Mr. Briones was assigned to the Edwardsville, Kansas terminal. Christina Wilson, Driver Manager, was Mr. Briones' immediate supervisor. On December 22, 2007, Mr. Briones telephoned Ms. Wilson, indicated that he was sick, and asked for a few days off. Mr. Briones indicated that his wife had also been sick. Ms. Wilson granted Mr. Briones request for time off. Ms. Wilson advised Mr. Briones that he would be allowed up to four days sick time. Under the employer's policy, a truck was not supposed to sit idle for more than four days before being returned to terminal. However, Ms. Wilson extended

the approved time off by instructing Mr. Briones to contact her on December 31, 2007, the Monday following the Christmas Holiday.

Mr. Briones did not contact Ms. Wilson on December 31. Ms. Wilson was able to contact Mr. Briones on January 7, 2008. At that time, Mr. Briones told Ms. Wilson that he needed to commence a leave of absence. Mr. Briones indicated that he needed the additional time off because he needed to attend a couple funerals. Mr. Briones did not tell Ms. Wilson who had passed away, when the funerals would be, or what his relationship was to the deceased. Ms. Wilson reminded Mr. Briones of the employer's policy that trucks are not allowed to sit idle for more than four days and that Mr. Briones would need to return the truck to the terminal in Kansas. Ms. Wilson agreed to fax Mr. Briones an application for leave under the Family and Medical Leave Act (FMLA). Ms. Wilson told Mr. Briones that as soon as they heard back on the application for leave, a decision regarding return of the truck would have to be made. Ms. Wilson faxed the FMLA application to Mr. Briones on January 7.

On January 8, Ms. Wilson received word from the employer's human resources department that Mr. Briones had not been employed long enough to qualify for FMLA leave. The employer did not have any other leave policy.

Ms. Wilson made several unsuccessful attempts to contact Mr. Briones. Ms. Wilson left several messages that went unanswered until on or about January 14. At that time, Ms. Wilson told Mr. Briones that he was not eligible for FMLA leave. Mr. Briones indicated he was going to take a leave, but asserted that he was not quitting the employment. Ms. Wilson told Mr. Briones that if he was taking an extended leave from the employment, the employer needed Mr. Briones' assigned truck back so that the employer could place it back in service and generate revenue. Mr. Briones indicated he understood. Mr. Briones then asked whether the employer could come to Iowa to collect the truck. Ms. Wilson checked with the terminal manager, who advised that if the employer had to travel to Iowa to collect the truck and return it to the terminal, the employer would charge Mr. Briones \$700.00 for retrieval of the truck. Ms. Wilson conveyed this information to Mr. Briones, who said he would bring the truck to the Kansas terminal.

Mr. Briones did not return the truck to the terminal until Saturday, January 19, 2008. Mr. Briones did not make contact with Ms. Wilson in connection with returning the truck. On the following Monday, Ms. Wilson found Mr. Briones' permit book and keys on her desk. There was no further contact between Mr. Briones and the employer.

Mr. Briones established a claim for unemployment insurance benefits that was effective January 27, 2008 and received benefits of \$840.00.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Mr. Briones quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 an employee left work voluntarily due to family responsibilities or serious family needs, the employee is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(21). Where an employee left work for compelling personal reasons, but the period of absence exceeded 10 working days, the employee is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(23).

Because the claimant did not participate in the hearing, the evidence in the record is limited to the testimony of Ms. Wilson. The weight of the evidence in the record establishes that Mr. Briones initiated the separation from the employment when he failed to report for work on December 31, 2007. The evidence indicates that Mr. Briones failed to contact the employer as directed on December 31, 2007, at the end of an authorized absence. The evidence indicates that Mr. Briones continued to be out of contact with the employer until January 7, 2008, at which time the employer was able to contact him. The evidence indicates that Mr. Briones then advised the employer he needed to further extend his absence from the employment. The evidence indicates that Mr. Briones was then out of contact with the employer for an additional week, while Ms. Wilson attempted to contact him regarding his request for FMLA leave. The employer had not communicated to Mr. Briones that his request for leave would be approved. The evidence indicates on January 14, Mr. Briones continued to be unwilling to return to the employment and, initially, was unwilling even to return the employer's truck. The evidence indicates that Mr. Briones never returned to the employment after December 31, 2007. Despite Mr. Briones' assertion to Ms. Wilson that he was not quitting the employment, his actions establish that Mr. Briones did in fact initiate a voluntary separation from the employment. The administrative law judge concludes that Mr. Briones voluntarily quit and was not discharged.

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 evidence indicates that Mr. Briones voluntarily quit for personal reasons. The evidence fails to establish compelling reasons for the quit. The evidence fails to establish that Mr. Briones left to attend to family responsibilities. In any event, the absence lasted well beyond 10 working days.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Briones voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Briones is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Briones.

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.

Because Mr. Briones has been deemed ineligible for benefits, the benefits he has received constitute an overpayment that Mr. Briones must repay to Iowa Workforce Development. Mr. Briones is overpaid \$840.00.

DECISION:

The Agency representative's March 12, 2008, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. 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, provided he is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$840.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw