

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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MARSHALLTOWN IA 50158

SWIFT & COMPANY
c/o EMPLOYERS UNITY INC
P O BOX 749000
ARVADA CO 80006-9000

GUADALUPE MCCARNEY
INTERPRETER
4316 GRAND AVENUE #7
DES MOINES IA 50312

Appeal Number: 04A-UI-02687-S2T
OC: 02/01/04 R: 02
Claimant: Appellant (1)

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-d - Voluntary Quit for Medical Reasons

STATEMENT OF THE CASE:

Adan Hernandez (claimant) appealed a representative's March 5, 2004 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2004. The claimant participated personally. The employer chose not to participate.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in 1996 as a full-time laborer. The claimant suffered an injury which has been determined to have not been caused by his employment. The claimant's last day of work was October 27, 2002. The claimant provided the employer with a physician's statement which indicated that he could not perform his work duties. The claimant notified the employer of his condition and the employer agreed to his absence from work. The claimant has not been certified to return to work by his physician.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes he did.

Iowa Code Section 96.5-1-d 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. 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to an injury under the advice of his physician. The employer consented to his leaving. The claimant has failed to provide the employer with certification that he has recovered. In addition the claimant has failed to offer his services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 5, 2004 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/d