

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSE M JOHNSON
Claimant

SWIFT & COMPANY
Employer

APPEAL NO: 09A-UI-11657-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/09
Claimant: Respondent (2-R)

Section 96.5-1-C – Voluntary Quit/Family Illness
871 IAC 24.25(23) – Serious Family Needs
871 IAC 24.22j(1),(2),(3) – Leave of Absence
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 4, 2009, reference 01, that held it failed to establish misconduct in the discharge of the claimant on July 8, 2009, and benefits are denied. A telephone hearing was held on August 27, 2009. The claimant participated. Tony Luse, Employment Manager, participated for the employer.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer.

Whether the claimant is overpaid unemployment benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time production worker on the second shift from November 19, 2007 to May 15, 2009. The claimant requested a leave from work in order to care for her ill father on May 18. The claimant obtained FMLA paperwork from a doctor's office and submitted a leave request to the employer on May 22. The leave request was for a period from seven days to six months in order for claimant to care for her ill father. The employer granted the claimant a leave of absence.

Although the claimant's father passed away on May 29, she did not notify her employer. The claimant stayed off work to attend to personal matters. The claimant called the employer on July 8 to see if she still had a job. When claimant told the employer her father had passed away on May 29, she was told she no longer had a job.

The claimant has claimed for and received unemployment benefits on her current claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to her employer on May 15, 2009 due to leaving work to care for her ill father on an FMLA leave, and then failing to notify the employer that the reason for that leave had ended with the death of her father on May 29, 2009.

The reason for claimant's medical leave was to care of her ill father, and the employer approved the open-ended leave period from seven days to six months, so the claimant could provide the necessary care. The reason for the leave ended with the death of claimant's father on May 29, and the failure to the claimant to notify the employer with a return to work, and remaining off work for personal reasons, is a voluntary leave without good cause attributable to the employer.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant has received benefits on her current claim, the overpayment issue is remanded for determination.

DECISION:

The department decision dated August 4, 2009, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to her employer effective May 15, 2009 when she failed to return to work when the reason for the leave had ended. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times

her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css