

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TARIQ ESSALAMA
Claimant

APPEAL NO. 10A-UI-12507-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 08/08/10
Claimant: Appellant (2)

Section 96.5-1-c – Leaving Employment to Care for a Family Member

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated September 1, 2010, reference 01, which denied unemployment insurance benefits based upon his separation from Swift & Company. After due notice, a telephone hearing was held on October 26, 2010. Claimant participated personally. Participating as a witness was Mohmed Zouak. Employer participated by Cheryl Hulett, Human Resource Manager. Magdy Salama was the official interpreter.

ISSUE:

The issue is whether the claimant left employment for the sole purpose of taking care of an immediate family member who was injured or ill and immediately returned to employment after the family member had recovered.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Tariq Essalama was employed by Swift & Company from February 23, 2009 until July 12, 2010 when he was considered to have voluntarily left employment because he was unable to return to work due to the illness of his mother and the necessity that he provide care for her.

Mr. Tariq Essalama was employed as a full-time production worker. His last day of work was June 23, 2010. The claimant requested and was granted a short-term leave of absence from June 23, 2010 through July 12, 2010 to provide assistance to his mother who was terminally ill.

On June 17, the claimant faxed a doctor's note stating that it was a medical necessity that the claimant remain to assist his ill mother.

As soon as Mr. Tariq Essalama completed providing assistance to his terminally ill mother, he returned to Swift & Company and attempted to return to work on August 5, 2010. Although a company representative indicated they had received the previous facsimile sent by the claimant's doctor, Mr. Essalama was informed that the company had "no job for him."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant left employment under non disqualifying conditions.

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.

Section 96.5-1-c provides that an individual should not be disqualified if the individual left the employ for the necessary and sole purpose of taking care of a member of the individual's immediate family who was ill or injured and immediately after the family member has sufficiently recovered returned and offered his or her services to the employer providing that the individual did not accept any other employment during that period.

The evidence in the record establishes that Mr. Essalama left his employment with Swift & Company initially on a leave of absence to provide care to his terminally ill mother. When the claimant was unable to return by the specified date, the employer categorized the claimant's separation as a voluntary quit although Mr. Essalama had provided medical documentation confirming the necessity that he remain to assist his terminally ill mother.

Although the employer was placed on notice that the claimant could not return for medically compelling reasons, he was nonetheless separated from employment. As soon as the necessity that the claimant remain with his mother for medical reasons no longer existed, Mr. Essalama immediately returned to Swift & Company in an attempt to return to employment. The claimant testified that he was told by a representative that although the employer had received the fax indicating that he was required to remain with his mother for medical reasons he nevertheless had "no job."

Because the claimant's separation from employment took place for the sole purpose of providing care to a member of the immediate family who was seriously ill and the claimant immediately returned after the need for his assistance had subsided as required by the provisions of Section 96.5-1-c of the Employment Security Law, the administrative law judge concludes that the claimant's separation took place under non disqualifying conditions.

DECISION:

The representative's decision dated September 1, 2010, reference 01, is reversed. Claimant left employment for the sole purpose of providing medical assistance to a seriously ill family

member and immediately returned and offered his services to his employer. Claimant is therefore not subject to benefit disqualification.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs