

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ATAKLT H BERAKI
Claimant

APPEAL 18A-UI-03636-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 02/25/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 16, 2018, (reference 01) unemployment insurance decision that denied benefits based on his discharge for excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on April 13, 2018. The claimant participated and testified. The employer did not participate.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a multi-vac from June 18, 2013, until he left employment to care for a family member on February 1, 2018 and no work was available when he tried to return on February 26, 2018. On February 1, 2018, claimant requested a leave of absence under the employer's FMLA policy to care for his girlfriend, who was pregnant with his child. Claimant testified the pregnancy had complications and the treating doctor told them someone needed to be available to care for her. The treating doctor wrote a note asking claimant be excused from work to care for his girlfriend and his unborn child. (Exhibit D). The employer informed claimant that the absences would not be covered under their FMLA policy. Claimant took the leave anyway. The child was born on February 20, 2018. On February 25, 2018, the claimant's girlfriend and child were doing well enough that he did not need to care for them any longer. Claimant attempted to return to work on February 26, 2018, but was told work was not available to him, as his absence had exceeded the ten points allowable under the employer's policies. (Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1)c provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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). Claimant left employment when he was advised by a treating medical professional that it was necessary for someone to care for his girlfriend, who was suffering from pregnancy complications with claimant's unborn child. Once the child was born and the medical provider indicated it was safe to do so, claimant attempted to return to work. When claimant attempted to return, he was told no work was available, as the employer considered his absences unexcused and he had exceeded the allowable number of attendance points. Accordingly, while claimant voluntarily left his employment, benefits are allowed, provided he is otherwise eligible.

DECISION:

The March 16, 2018, reference 01, unemployment insurance decision is reversed. The claimant voluntarily left his employment to care for an immediate family member who was injured or ill and, upon her recovery, immediately returned to the employer to offer services but work was not available. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs