

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDRIA C ATER**  
Claimant

**APPEAL NO. 09A-UI-00116-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 10/19/08 R: 02**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Andria Ater filed a timely appeal from the December 24, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 24, 2009. Mr. Ater participated. Tony Luse, Employment Manager, represented the employer. Denca-English interpreter Francis Chan assisted with the hearing.

**ISSUES:**

Whether the claimant voluntarily quit or was discharged from the employer. The administrative law judge concludes that the claimant voluntarily quit by being absent without notifying the employer for three consecutive days.

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Andria Ater started his full-time employment with Swift & Company on December 10, 2007 and worked as a production worker on the kill floor. Mr. Ater's regular hours were 4:00 p.m. to midnight, Monday through Friday. Mr. Ater's immediate supervisor was Victor Gonzales, Kill Floor Supervisor.

Mr. Ater last performed work for the employer on Friday, December 10, 2008. Mr. Ater then traveled to New York to be with his family. Mr. Ater had just learned that his sister had passed away in Sudan. Before Mr. Ater traveled to New York, he attempted to leave a message for the employer on an answering machine. The employer did not receive the message. The message Mr. Ater attempted to leave would have been cryptic if the employer had received it because Mr. Ater said in the message only that he had a problem. Mr. Ater is originally from Sudan and his native language is Denca. Mr. Ater has limited English skills. The employer has bilingual staff available to interpret from English to Denca and from Denca to English. Mr. Ater made no further attempt to notify the employer of his need to be away from work. Mr. Ater was absent from scheduled shifts on October 13, 14, and 15 and did not notify the employer on those days that he would be absent from work. The employer's attendance policy required that Mr. Ater call the employer at least an hour before the scheduled start of the shift if he needed to be absent.

The employer's "no-call, no-show" policy warned employees that three consecutive absences without notifying the employer would be deemed a voluntary quit. The employer had reviewed these policies with Mr. Ater at the start of the employment in Denca and Mr. Ater was aware of the policies. The employer waited until Mr. Ater had been absent for three consecutive shifts without notifying the employer before the employer recorded a voluntary quit. At some point Mr. Ater returned to the workplace and learned that the employer considered his employment terminated.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

When an employee is absent for three days without giving notice to employer in violation of a company rule, the employee is deemed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(4).

Iowa Code section 96.5-1-f 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:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

The weight of the evidence indicates that Mr. Ater had compelling personal reasons for being absent from the employment. The weight of the evidence further indicates that Mr. Ater returned to the employment within 10 work days and learned that work was not available. However, the evidence in the record indicates that Mr. Ater failed to provide meaningful information to the employer about his need to be absent from work before he began his absence. The only attempt Mr. Ater made to notify the employer was a cryptic message about "a problem," which message may or may not have been properly recorded on the employer's answering machine. This did not constitute reasonable notice to the employer of the need to be absent for compelling reasons. The evidence indicates that the employer had interpreters available to assist Mr. Ater in conveying to the employer the reason for his need to be absent.

Mr. Ater unreasonably failed to take advantage of this resource before he left town and the state. Mr. Ater was then absent for three consecutive days without notifying the employer in violation of the employer's attendance policy.

Based on the evidence and the appropriate law, the administrative law judge concludes Mr. Ater voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Ater 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. Ater.

**DECISION:**

The Agency representative's December 24, 2008, reference 01, decision is affirmed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs