IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MELISSA A ROUZE Claimant **SWIFT PORK COMPANY** Employer	**APPEAL 17A-UI-03293-SC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/26/17** **Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Swift Pork Company (employer) filed an appeal from the March 14, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Melissa A. Rouze (claimant) was laid off due to a lack of work. The parties were properly notified about the hearing to cover the separation issue under Iowa Code §§ 96.5(2)a and 96.5(1). A telephone hearing was held on April 19, 2017. The claimant participated and was represented by Attorney Eric J. Loney. The employer participated through Occupational Health Manager Linda Davis and Human Resources/FMLA Coordinator Kristy Knapp. The parties waived notice on the issues of overpayment and participation under Iowa Code § 96.3(7) and Iowa Administrative. Code rule 871-24.10. Employer's Exhibits 1 through 9 were received.

ISSUES:

Is the claimant qualified for benefits based upon her medically-related temporary separation from employment?
Has the claimant been overpaid unemployment insurance benefits?
Can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a production worker beginning on July 10, 2007. She suffered a work-related injury on April 6, 2015. On June 15, 2016, the claimant was given permanent restrictions by her doctor that did not allow her to return to her previously held position. She covered an open position as an Upper Operator for a co-worker who was on leave. On October 27, 2016, the claimant's co-worker returned to work and the claimant was reassigned to a Trim Butts position.

On November 17, 2016, the claimant reported she could no longer continue in the Trim Butts position as the weight of the product and repetitive movements were causing strain on her shoulder. The claimant was offered a position on the harvest or kill floor, where whole hogs are dismembered for processing. The claimant had only previously worked on the production side of the facility and told the nurse she worried she would have a negative reaction to the visuals and smell of the harvest floor. However, despite her concerns, the claimant agreed to try the position as she felt she had no other option. The claimant reported to the harvest floor and became physically ill due to the visuals and smells. The supervisor told her to leave the floor if she was going to be vomit. The claimant did as instructed and returned to Occupational Health Services to report she was unable to work on the harvest floor.

On December 6, 2016, the employer offered the claimant three additional positions on the harvest floor. The claimant declined the positions. On January 17, 2017, the claimant was placed on an 18-month bid walk, which allows her to remain an employee and search any new positions the employer has open, although she is not currently performing any work for the employer. The employer has not had any other positions which fit the claimant's restrictions.

The administrative record reflects that claimant has received unemployment benefits in the amount of $2,752.00, since filing a claim with an effective date of February 26, 2017, for the seven weeks ending April 15, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant has been separated from her employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(35) provides:

> Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not

> disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:
>
> (a) Obtain the advice of a licensed and practicing physician;
>
> (b) Obtain certification of release for work from a licensed and practicing physician;
>
> (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
>
> (d) Fully recover so that the claimant could perform all of the duties of the job.

Iowa Admin. Code r. 871-24.26(6)b provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (6) Separation because of illness, injury, or pregnancy.
>
> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code § 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. Emp't Appeal Bd.*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. Iowa Emp't Sec. Comm'n*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, separation from employment for that reason is involuntary and for good cause

attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787 (Iowa 1956).

In this case, while the employer still classifies the claimant as an employee, she is separated from employment because the employer does not have a position for her. As the claimant's injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work with permanent restrictions, the claimant has established her ability to work. The employer had positions available on the harvest floor; however, the claimant was physically unable to work the harvest floor due to the nature of the work. The claimant had never worked on the harvest floor and the work in that part of the facility is going to be impossible for some employees. Because the employer had no work available that fit the claimant's restrictions and was on the production side of the facility, benefits are allowed.

As benefits are allowed, the issues of overpayment and repayment are moot and charges to the employer's account cannot be waived.

DECISION:

The March 14, 2017, reference 01, unemployment insurance decision is affirmed. The claimant was separated from the employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment and repayment are moot and charges to the employer's account cannot be waived.

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Stephanie R. Callahan
Administrative Law Judge

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Decision Dated and Mailed

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