

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HELENA YOUNG**  
Claimant

**APPEAL NO. 12O-UI-11953-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 05/13/12**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The employer, Swift, filed an appeal from a decision dated June 14, 2012, reference 01. The decision allowed benefits to the claimant, Helena Young. After due notice was issued, a hearing was held by telephone conference call on December 5, 2012. The claimant participated on her own behalf and Joe Peters acted as interpreter. The employer participated by Assistant Human Resources Manager Javier Sanchez.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Helena Young was employed by Swift from September 24, 2009 until March 29, 2012 as a full-time production worker. At the time of hire she received a copy of the employee handbook and orientation, with an interpreter. The company policy considers three days of no-call/no-show to work is considered a voluntary quit.

She went on FML for pregnancy on December 15, 2011, and was to return to work on March 9, 2012. Prior to that she requested an extension and was granted another two weeks using her vacation time and the return to work date was changed to March 26, 2012.

Ms. Young was no-call/no-show to work March 26, 27, and 28, 2012. She knew the procedure to call in and failed to do so. For reasons which are not clear the claimant believed she did not have to return to work until May 15, 2012, and when she appeared on that date she was told she no longer had a job.

Helena Young has received unemployment benefits since filing a claim with an effective date of May 13, 2012.

## REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant is considered a voluntary quit for being no-call/no-show to work for three days in violation of a known company policy. Her belief she had an extra two months of leave time is not reasonable in light of the 12 weeks of FML already granted and her lack of more than two weeks of accumulated vacation time. She was gone for five months, the final two without any approval. Her failure to come to work or call in is considered a voluntary quit under the provisions of the above Administrative Code section.

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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division for determination.

**DECISION:**

The representative's decision of June 14, 2012, reference 01, is reversed. Helena Young is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css