

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUKE A PURK
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 15A-UI-04396-KC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 1, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 18, 2015. The claimant participated. His witness Jeremy Purk was initially available but was disconnected and two attempts to reach him directly were unsuccessful. The employer participated through Stacey Santillan, Human Resources Manager.

ISSUE:

Did the claimant voluntarily quit employment for good cause attributable to the employer?

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 bone meal driver beginning on April 8, 2013. He last worked on March 17, 2015. He was separated from employment on March 19, 2015, when the employer decided that he did not intend to return to work.

When the claimant was hired, he understood that he would work full-time and could be required to work overtime, as needed. He understood he would start at 6:00 a.m. He was told that another employee would be hired and the two employees would share the tasks. A second employee was not hired to perform the same job duties at any time during the 23 months that the claimant was employed with Swift.

The claimant presented for work at 6:00 a.m., unless he received a call from the employer to report earlier. He received calls from the employer as early as 1:00 a.m. to report as soon as possible to work. In the last 11 months of his employment, the claimant worked between 70 and 80 hours per week.

On multiple occasions during the last year of his employment, the claimant spoke with supervisors from all three shifts: Adolfo Honts, Rudolfo Mara, and Dan Kriegel; about his need to have assistance. The shift supervisors referred him to rendering superintendent John Holden, who supervises everyone in the claimant's division, to discuss his need for assistance. Holden told the claimant he did not know when another employee would be hired to do what the claimant was doing. Most recently, the claimant spoke with Holden on March 14, 2015 and March 16, 2015 about his ongoing need for assistance. Holden told him he had not talked to anyone about hiring another worker for the position.

On March 17, 2015, the claimant started work at 4:00 a.m. and worked until 10:30 p.m. He then went to third shift supervisor Kriegel and gave him his equipment. He told Kriegel that he could no longer do the job. Kriegel indicated that he understood that the claimant had been working many hours per week. The claimant had no further contact or interaction with the employer.

Santillan testified that Holden attempted to call the claimant on March 19, 2015 to determine what happened on March 17, 2015. The claimant received no calls from the employer after he left work. He has voicemail and his phone number has not changed recently.

Regarding the employer's current practice, the claimant had observed an employee he recognized doing one portion of the job he performed: driving the rail car. He had observed another worker driving the truck. The claimant had performed both tasks while working for the employer. Santillan indicated that a third-party contractor was doing the work the claimant did while they attempted to find a qualified candidate. Santillan did not indicate whether a current employee was also performing part of the work the claimant performed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(4) and (1) provide:

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:

(4) The claimant left due to intolerable or detrimental working conditions.

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Iowa Code § 96.5(1) provides:

Causes for disqualification.

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.

Iowa Admin. Code r. 871-24.26(1) 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:

24.26(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. The Iowa Supreme Court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Although the claimant was not required by law to give the employer notice of his intent to quit, the change to the terms of hire must be substantial in order to allow benefits. In this case, the claimant worked 70-80 hours per week for 11 months prior to the time he quit. Upon hiring, the claimant understood that he would have to work overtime as needed but he was also told he would have another employee working with him. The second employee was not hired during the claimant's tenure with the employer. The claimant has met the burden of proof to show that he quit with good cause attributable to the employer. Benefits are allowed.

DECISION:

The April 1, 2015, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/css