

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIC RWISUNGA
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 18A-UI-05048-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/01/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 19, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant quit due to serious family illness. The parties were properly notified of the hearing. A telephone hearing was held on June 13, 2018. The claimant, Eric Rwisunga, participated. The employer, Swift Pork Company, participated through Vicky Cervantes, Human Resource Manager. Swahili/English interpreter Silva (ID number 11181) assisted with the hearing.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as general laborer, from November 27, 2017 until March 13, 2018, when he quit. Claimant told Emily Pottorff, Assistant HR Manager, and Janet Cruz, Second-Shift Superintendent, that he was quitting. Claimant reported that his son was born prematurely and was in the hospital, so he needed to quit. Claimant explained that he needed to care for his child and did not want to be late every day. Claimant has two infant children of one year old or less, and the mother is not able to care for them, so claimant has to assist her. The employer was aware that claimant's child was quite ill and they tried to work with him to take leave so he could be with his infant son. Continued work was available, had claimant not quit his employment.

REASONING AND CONCLUSIONS OF LAW:

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

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. 871-24.25 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: ...

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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). Here, claimant left his employment due to an ill infant child. This is certainly understandable. However, this is not a reason that is fairly attributable to the employer. 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 voluntarily separated from employment in order to care for his children. Claimant's separation is without good cause attributable to the employer. Benefits are withheld.

DECISION:

The April 19, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn