

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD D BEAVER**  
Claimant

**APPEAL NO. 11A-UI-15374-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC:10/30/11**  
**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated November 21, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 22, 2011. Employer participated by Aureliano Diaz, the human resources manager, and Jeremy Purchase, the assistant plant engineer. The claimant responded to the hearing notice but when the claimant's number was called by the administrative law judge, the individual answering the phone said that the claimant was not available. A message was left with that individual on how the claimant could participate in the hearing. The claimant did not call in during the hearing. The record consists of the testimony of Aureliano Diaz and the testimony of Jeremy Purchase.

**ISSUES:**

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a pork processing plant located in Marshalltown, Iowa. The claimant was hired on March 1, 1996. His last day of work was October 24, 2011. At that time he was the third shift maintenance supervisor. The claimant walked off the job on October 24, 2011. The claimant gave no reason why he left the job site. Work was available for the claimant at the time he decided to quit.

## 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.

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.

The evidence in this case established that the claimant initiated the separation of employment by walking off the job on October 24, 2011. He left work and did not give any reason to the employer. The claimant did not participate in the hearing and his reasons for leaving are unknown. The claimant had the burden of proof to show that his quitting was for good cause attributable to the employer. Since there is no evidence why the claimant quit and whether his reasons are good cause attributable to the employer, he is disqualified from receiving benefits. Benefits are denied.

The next issue is overpayment of benefits.

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 overpayment issue is remanded to the Claims Section for determination.

**DECISION:**

The decision of the representative dated November 21, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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