

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTIN SILVA
Claimant

APPEAL NO. 09A-UI-08199-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 05/03/09
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Misconduct
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 3, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 23, 2009. Claimant participated. Employer participated by Tony Luse. Exhibit 1 was admitted into evidence. Patricia Vargas provided Spanish interpretation.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 17, 2009. The claimant worked on the production line for Swift. He started his employment in June 2008. He was not eligible for FMLA leave as he had not worked for his employer a year. The claimant did not have any leave time as he had used it for another matter. The claimant requested two weeks off to be with his ill mother who was in Mexico. The claimant asked his supervisor, who referred him to human resources. The claimant was informed that he was not eligible for FMLA or other leave and if he took time off he would not have a job. The claimant indicated he was going to leave to be with his sick mother and was told that he no longer had a job. He then filled out papers indicating he quit. The claimant did not fill out papers formally requesting leave. The claimant was required to turn in his tools and work card that granted him access to the plant on March 17, 2009. The employer did not have anyone who spoke to the claimant on March 17, 2009 testify at the hearing. The claimant has been available for work as of the week of April 5, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.5-1-f 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:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

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 claimant testified under oath he requested time off to see his sick mother. He was told he did not have enough leave and was not eligible for FMLA leave. When he informed the employer he was leaving to see his mother he was given forms to sign indicating he quit. The employer did not have Aaron Vawter, who signed the employer separation form, testify. The claimant's testimony, absent any first-hand testimony contrary, was convincing that he did not intend to quit. He wanted a leave to visit his sick mother. When he was told he could not have the leave and he told the employer he was leaving, he was terminated. The claimant did not commit misconduct. The employer has the right to terminate the claimant under Iowa law.

Under Iowa law, for unemployment purposes, an employee may be absent for up to ten days for compelling personal reasons. The claimant must notify the employer of the reason for the absence and upon return notify the employer of availability. The claimant had a compelling personal reason, notified the employer of the reason. He did not notify his employer about his availability when he returned, as he was discharged on March 17 and therefore no longer had an employer to report to. He was terminated when he told his employer he had to leave work for compelling personal reasons. Thus even if one were to consider his quit a voluntary quit, under the law the quit is deemed to be with good cause attributable to the employer.

The claimant returned to the United States and has been able and available since April 7, 2009.

DECISION:

The decision of the representative dated June 3, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/css