

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC DAVALOS
Claimant

APPEAL NO. 08A-UI-05901-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**OC: 05/11/08 R: 01
Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Swift & Company filed a timely appeal from the June 20, 2008, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on July 14, 2008. Claimant Eric Davalos participated. Tony Luse, Employment Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One and Two into evidence.

ISSUES:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes that the claimant voluntarily quit.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 27, 2006, Eric Davalos started his employment with Swift & Company as full-time production worker. On December 10, 2007, Mr. Davalos called in sick because he wanted to visit a college campus in Fort Dodge. Mr. Davalos was not actually sick, but reported the absence and illness-related. Mr. Davalos was scheduled to work on December 11, 12, and 13, but neither appeared for work nor notified the employer to say he would be absent. Prior to the absences, Mr. Davalos had been placed on a probationary status due to attendance issues. Mr. Davalos was still on that probation at the time of the absences. Mr. Davalos assumed that his absences would cost him his job and did not return to the employment after completing a shift on December 8, 2007. The employer has a policy that deems three days of "no-call/no-show" absences a voluntary quit. Mr. Davalos was aware of the policy.

Mr. Davalos established a claim for unemployment insurance benefits that was effective May 11, 2008 and has received benefits totaling \$3,123.00.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Mr. Davalos voluntarily quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

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.

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.

The greater weight of the evidence indicates that Mr. Davalos voluntarily quit the employment by being absent three days without notifying the employer in violation of the employer's policy regarding "no-call/no-show" absences. The evidence further indicates that Mr. Davalos' voluntary quit was without good cause attributable to the employer. Accordingly, Mr. Davalos is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Davalos.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because Mr. Davalos has received benefits for which he has been deemed ineligible, those benefits constitute an overpayment that Mr. Davalos must repay to Workforce Development. Mr. Davalos is overpaid \$3,123.00.

DECISION:

The Agency representative's June 20, 2008, reference 03, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$3,123.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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