

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA D CORONA
Claimant

APPEAL NO. 11O-UI-07801-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

**OC: 01/09/11
Claimant: Respondent (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

This matter was before the administrative law judge based on an Employment Appeal Board remand for a new hearing in Hearing Number 11B-UI-01615. The employer had filed a timely appeal from the February 1, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 18, 2011. Claimant Maria Corona participated. Neysa Hartzler, Coordinator, represented the employer. Spanish-English Interpreter Ike Rocha assisted with the hearing.

ISSUE:

Whether Ms. Corona separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Maria Corona was employed by JBS, formerly known as Swift Pork Company, as a full-time production worker from 2001 and last performed work for the employer on December 13, 2010. Ms. Corona left early that day, purportedly due to personal illness. Ms. Corona left with the permission of the employer.

Ms. Corona had received word that her husband had undergone surgery on December 9, 2010 to remove hemorrhoids. Ms. Corona's husband was in Mexico. Ms. Corona most likely learned of husband's condition on December 9, 2010. Ms. Corona's husband wanted her assistance during the healing process. As of December 9, the doctor anticipated the healing process would last 28 days, or until January 6, 2011. Ms. Corona traveled to Mexico to be with her husband. Given Ms. Corona's arrival in Mexico on December 16 and the length of the journey, Ms. Corona probably left for Mexico shortly after she left work early on December 13. Though Ms. Corona lived only five or six blocks from her workplace, she made no attempt to contact the employer to let them know what was going on before she traveled to Mexico. At some point after her arrival in Mexico, Ms. Corona had her husband's doctor fax to the employer a copy of the note he had dictated on December 9 after the surgery. The note specified the surgery had

occurred on December 9, the nature of the surgery, the 28 day healing time, and the fact that he had dictated the note at the request of Ms. Corona's family.

Ms. Corona made *no* contact with the employer until January 10, 2011, when she appeared at the workplace and attempted to return to the employment. At that point, the employer asserted that she had quit and declined to allow her to return to the employment.

Ms. Corona had not sought or accepted other employment during her absence from JBS.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Administrative Code section 871 IAC 24.26(8) provides that a claimant will have been deemed to have quit for good cause attributable to the employer if:

The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

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.

Pursuant to the above statute and administrative rule, the administrative law judge must conclude that Ms. Corona separated from the employment for good cause attributable to the employer. The evidence indicates that Ms. Corona left the employment for the necessary and sole purpose of caring for her husband, who was ill. The statute in question does not impose an obligation to notify the employer of the reason for the absence prior to the absence. The evidence indicates that when Ms. Corona's husband was sufficiently healed that he no longer required her assistance, Ms. Corona made her way back to Iowa and attempted to return to

work. The employer would not allow her to return to work. Ms. Corona had not accepted other employment during her absence.

Ms. Corona voluntarily quit the employment for good cause attributable to the employer. Accordingly, Ms. Corona is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Corona.

DECISION:

The Agency representative's February 1, 2011, reference 01, decision is affirmed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css