

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANKU K KODAKI

Claimant

APPEAL NO: 11O-UI-16462-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 07/10/11

Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 8, 2011 determination (reference 01) that held the claimant qualified to receive unemployment insurance benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 8, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing. The claimant did not participate in the hearing. Aureliano Diaz appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge issued a September 9, 2011 decision that disqualified the claimant from receiving benefits as of July 10, 2011.

The claimant appealed the September 9, 2011 decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing. Hearing notices were again mailed to the parties informing them that a telephone hearing was scheduled on February 8, 2012. The claimant properly responded to the hearing notice and provided the Appeals Section with a phone number to contact her at for the hearing. On February 8 at 2:00 p.m., the claimant was called for the hearing. The interpreter, Agata Sisto, left a message on the claimant's answering machine that she had been called for the hearing and the number she needed to contact if she wanted to participate in the hearing. The claimant did not respond to the message left and did not contact the Appeals Section on February 8, 2012. Aureliano Diaz again participated in the hearing. The employer agreed the September 9, 2011 decision could be reinstated since the claimant did not participate in the rescheduled hearing. Based on the evidence and the employer arguments presented on September 8, 2011, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 9, 2009. She worked full time as a second shift production laborer at the employer's Marshalltown, Iowa pork processing facility. Her last day of work was June 17, 2011.

The claimant had previously been approved for vacation from June 20 through June 26, 2011. She was scheduled to report back to work on June 27. At about 2:30 p.m. on June 27, the claimant called and left a voice mail message on the employer's call in attendance system. She first stated that she was absent because she was "sick," then stated that she was on "vacation." She did not call or report to work for her scheduled shifts on June 28, June 29, June 30, July 1, and July 5.

On July 6 she reported to work and intended to work. Instead of working, the employer asked why she had not worked since June 27. The claimant indicated she had been in Kansas for her vacation. As of June 27 she did not have a way back to Marshalltown, so she had extended her vacation. She did not return until she was able to find someone who could go to Kansas to pick her up and bring her back. She did not indicate she had been sick June 27 through July 5. The employer did not consider her an employee after she took an unauthorized vacation from June 27 through July 5.

The claimant established a claim for unemployment insurance benefits effective July 10, 2011. The claimant has filed for and received unemployment insurance benefits since July 10, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good attributable to the employer or an employment discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). Since the claimant made the decision she would not return to work after her authorized vacation, she voluntarily quit her employment. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant quits without good cause when she does not report to work because of a loss of transportation or in order to take an unapproved vacation is not good cause. 871 IAC 24.25(1), (25), (27). The evidence does not establish that the claimant quit for reasons that qualify her to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's August 8, 2011 determination (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. The claimant is disqualified from receiving unemployment insurance benefits as of July 10, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css