

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CECELIA YARKPAWOLO
Claimant

APPEAL NO. 09A-UI-08894-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 05/10/09
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Swift & Company filed an appeal from a representative's decision dated June 11, 2009, reference 01, which held that no disqualification would be imposed regarding Cecelia Yarkpawolo's separation from employment. After due notice was issued, a hearing was held by telephone at 11:00 a.m. on July 30, 2009. The employer participated by Tony Luse, Employment Manager. Exhibits One through Four were admitted on the employer's behalf.

Ms. Yarkpawolo responded to the notice of hearing and the administrative law judge attempted to reach her at 11:03 a.m. She did not respond to the message until 11:34 a.m., after the hearing record was closed. She indicated that she had had to leave at approximately 9:00 a.m. to take her daughter to the hospital and had just returned home. She was given the opportunity to provide proof that she was at the hospital and unable to participate in the hearing through no fault of her own. It was suggested that she fax a copy of the hospital discharge summary and she agreed to do so. However, the document she faxed was from a hospital visit on June 29 at 3:40 p.m. Because the document did not establish that she was at the hospital at the time of the hearing, the administrative law judge declined to reopen the hearing record.

ISSUE:

At issue in this matter is whether Ms. Yarkpawolo was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Yarkpawolo began working for Swift on April 28, 2008 as a full-time production worker. She was presumed to have quit after she was absent on May 8, 11, and 12, 2009 without notice to the employer. She did not return to work thereafter. She had not complained about any work-related matters prior to May 8, 2009.

Continued work would have been available if Ms. Yarkpawolo had continued reporting to work. Although there had been attendance issues, she had only received 7.5 points when she

stopped reporting. It takes 10 points before an individual is subject to discharge because of attendance. Under the employer's rules, three consecutive unreported absences are considered a voluntary quit. Ms. Yarkpawolo had received a copy of the work rules.

Ms. Yarkpawolo filed a claim for job insurance benefits effective May 10, 2009. She has received a total of \$4,248.00 in benefits since filing her claim.

REASONING AND CONCLUSIONS OF LAW:

Ms. Yarkpawolo abandoned her job when she stopped reporting for available work. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). An individual who is absent from work for three days without notice in violation of a known work rule is presumed to have quit without good cause attributable to the employer. 871 IAC 24.25(4). Ms. Yarkpawolo was absent May 8, 11, and 12 but did not call the employer on any of those dates.

Ms. Yarkpawolo did not participate in the hearing to explain why she stopped going to work. The record as a whole failed to establish good cause attributable to the employer for the separation. As such, benefits are denied. Ms. Yarkpawolo has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment.

As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated June 11, 2009, reference 01, is hereby reversed. Ms. Yarkpawolo quit her employment with Swift for no good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Yarkpawolo will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css