

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANGELINA G MATIAS
Claimant

APPEAL NO. 18A-UI-09516-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 08/26/18
Claimant: Appellant (2)

Iowa Code Section 96.5(1)(c) – Leaving Employment to Care for an Ill Family Member

STATEMENT OF THE CASE:

Angelina Matias filed a timely appeal from the September 11, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Matias voluntarily quit on July 20, 2018 without good cause attributable to the employer by being absence three consecutive days without notice to the employer. After due notice was issued, a hearing was held on October 2, 2018. Ms. Matias participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Spanish-English interpreter Enrique Cuba of CTS Language Link assisted with the hearing. Exhibits A through F and Department Exhibit D-1 were received into evidence.

ISSUE:

Whether Ms. Matias separated from the employer for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Angelina Matias was employed by Swift Pork Company, a/k/a JBS, as a full-time production worker at the employer's Ottumwa plant. Ms. Matias began the employment in March 2017 and last performed work for the employer on July 13, 2018. Ms. Matias is from Guatemala. Ms. Matias grew up in a family that speaks Aketeko Maya. Ms. Matias learned Spanish as a second language. Ms. Matias' parents continue to reside in Guatemala, speak Aketeko Maya, but do not speak Spanish.

On July 16, 2018, Ms. Matias spoke with the JBS human resources personnel regarding her need for a leave of absence so that she could travel to Guatemala to be with her ill mother. Ms. Matias' mother is 72 years old and suffers from diabetes. At the time Ms. Matias spoke to the employer, she understood her mother to be on her death bed and feared her mother would soon pass away. The employer approved Ms. Matias' request for a leave of absence for the period of July 16, 2018 through July 31, 2018. The employer provided Ms. Matias with Family

and Medical Leave Act (FMLA) application materials. Ms. Matias took those materials with her when she traveled to Guatemala.

Ms. Matias arrived in Guatemala on July 17, 2018 and reached her parents' home the next day. Ms. Matias immediately began providing needed assistance to her mother. She assisted her mother with getting to the restroom, with standing, and interpreted for her mother at medical appointments with Spanish-speaking medical personnel. On July 18, 2018, Ms. Matias' mother's doctor completed an FMLA Certification of Health Care Provider for Family Member's Serious Health Condition. The doctor noted on the certification that Ms. Matias' mother needed Ms. Matias' help from July 18, 2018 through August 18, 2018 and that Ms. Matias' mother needed Ms. Matias' assistance with feeding, ambulating, and transportation to medical appointments.

On July 28, 2018, Ms. Matias emailed the FMLA certification and other supporting documents to the employer as email attachments. When Ms. Matias did not receive a response from the employment, Ms. Matias sent another email to the employer on July 30, 2018 asking for the employer to confirm receipt of the documents. Ms. Matias received no response.

During the period of her absence from the employment, Ms. Matias called the employer's absence reporting line on a daily basis to give notice of her need to be absent. Ms. Matias last made such a call on August 20, 2018.

Though Ms. Matias' mother continued to need Ms. Matias' help, Ms. Matias left Guatemala for Iowa at the end of the FMLA certification period provided by the doctor. Ms. Matias promptly attempted to report back to the employment on August 21, 2018. Ms. Matias had not accepted any other employment during the absence. When Ms. Matias attempted to report for work, the employer told Ms. Matias there was no further work for her. Ms. Matias contacted her union representative. The union representative provided Ms. Matias with a letter from JBS, dated August 6, 2018, that asserted there had been voluntary quit effective August 6, 2018 based on purported no-call/no-show absences. The letter was directed to Angelica Matias, not Angelina Matias. The letter was directed to a mailing address that was not Angelina Matias' mailing address and a place where Angelina Matias had never resided. Ms. Matias had not received the letter prior to receiving a copy from the union on or after August 21, 2018.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)c provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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 evidence in the record establishes a non-disqualifying separation based on the need to care for an ill family member. Prior to commencing her time away from the employment, Ms. Matias notified the employer of her need to travel to Guatemala to care for her ill mother. The employer approved a leave of absence for the period of August 16-31, 2018. Ms. Matias was unable to return to the employment at the end that approved period because her mother's illness required her assistance. Prior to the end of the approved leave period, Ms. Matias provided the employer with FMLA application and certification materials that supported her mother's continued need for her assistance through August 18, 2018. At that end of that physician-certified period, Ms. Matias promptly returned to offer her services to the employer, but the employer refused to make further work available. Ms. Matias had not accepted other employment during her absence from JBS. Under the disqualification exception in Iowa Code section 96.5(1)(c), Ms. Matias is eligible for benefits provided she is otherwise eligible and the employer's account may be charged.

DECISION:

The September 11, 2018, reference 01, decision is reversed. The claimant separated from the employment for the sole purpose of caring for an ill family member, promptly returned to offer her services following care of her ill family member, did not accept other employment during the absence, and was refused further employment. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs