

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS R WOERNER
Claimant

APPEAL NO. 09A-UI-05851-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 03/08/09
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 April 3, 2009, reference 01, which held that no disqualification would be imposed regarding Marcus Woerner's separation from employment. After due notice was issued, a hearing was held by telephone on May 12, 2009. The employer participated by Tony Luse, Employment Manager. Mr. Woerner responded to the notice of hearing and the administrative law judge made two attempts to reach him at the scheduled time of the hearing. The phone was allowed to ring ten times on each occasion but there was no answer.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Woerner began working for Swift on February 21, 2007 as a full-time production employee. His last day of work was January 2, 2009, after which he was off work due to illness. He properly reported the intent to be absent and called through March 2.

Mr. Woerner did not report for work or call in on March 3, 4, 5, or 6. He then called on March 9 and 10 to report that he would be absent due to illness. He did not report for work or contact the employer at any point after March 10. The employer has a work rule, of which Mr. Woerner was aware, that provides that three consecutive unreported absences will be considered a voluntary quit. Continue work would have been available if Mr. Woerner had continued reporting for work or had notified the employer of his intentions.

Mr. Woerner filed a claim for job insurance benefits effective March 8, 2009. He has received a total of \$2,160.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Mr. Woerner abandoned his job when he stopped reporting for available work after March 10 with no notice to the employer. Therefore, his separation was a voluntary quit. 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). Mr. Woerner did not participate in the hearing to explain why he stopped reporting for work. The evidence does not suggest any good cause attributable to the employer for the separation. For the above reasons, benefits are denied.

Mr. Woerner has received benefits since filing his claim. 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 April 3, 2009, reference 01, is hereby reversed. Mr. Woerner quit his employment with Swift for no good cause attributable to the employer. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Woerner will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs