

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE G ALVAREZ

Claimant

APPEAL NO. 11A-UI-09937-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 06/12/11

Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 18, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 19, 2011. Claimant participated. Aureliano Diaz represented the employer and presented additional testimony through Liz Ebarra. Spanish-English interpreter Ninfa Redmond assisted with the hearing.

ISSUE:

Whether the claimant separated from the employment for a reason that would disqualify him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: José Alvarez was employed by Swift Pork Company, also known as JBS, as a full-time production worker from 2001 and last performed work for the employer on April 9, 2011. At that time, Mr. Alvarez commenced an approved leave of absence so that he could travel to Mexico, where his wife was preparing to undergo surgery on her appendix. A doctor in Mexico provided a document that indicated Mr. Alvarez's presence was necessary so that he could assist his wife with her recovery. This document was provided to the employer. The employer approved a leave of absence for the period of April 13-27 and expected Mr. Alvarez to return to work on April 28.

On April 26, Mr. Alvarez contacted the employer, indicated that his wife was still sick, and indicated that he needed more time. Mr. Alvarez stayed in Mexico to assist his wife while she recovered from her surgery.

Once his wife was sufficiently recovered so that Mr. Alvarez could return to work, Mr. Alvarez promptly returned to Iowa during the first week of June. On the day after he returned to Iowa, Mr. Alvarez went to the workplace to inquire about returning to work. A human resources representative notified Mr. Alvarez that he was no longer employed. Mr. Alvarez had not accepted other employment during the absence.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(c) provides as follows:

96.5 Causes for disqualification.

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.

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 indicates that Mr. Alvarez left the employment in April for the sole purpose of caring for his sick wife, who needed to undergo surgery and who needed his assistance during her recovery. The evidence establishes that Mr. Alvarez promptly returned to the employer once his wife had sufficiently recovered and that the employer indicated there was no work available. The evidence establishes that the claimant did not accept other employment during the absence. Under the statute cited above, the claimant is eligible for benefits, provided he is otherwise eligible, and the employer's account may be charged.

DECISION:

The Agency representative's July 18, 2011, reference 01, decision is affirmed. The claimant separated from the employment to care for a sick family member. The claimant is eligible for benefits, provided he meets all other eligibility requirements area. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw