

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MOMO D WOAHTEE

Claimant

APPEAL 15A-UI-10710-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 09/21/14

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 15, 2015, (reference 06) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on October 8, 2015. Claimant participated. Employer participated through assistant human resource manager, Ellie Tellez.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a packager from March 16, 2015, and was separated from employment on June 5, 2015, when he quit. His last day of work was Friday, April 24, 2015. His girlfriend had a C-section in October 2014, and was on bed rest for five to six months. She became ill again and needed help at home. He called in reporting his personal illness from May 18 through June 2. He was a no-call/no-show on June 3, 4 and 5. The employer's policy provides that no-call/no-show absences for three consecutive workdays is considered a voluntary quitting of employment. He did not provide a medical excuse for his girlfriend needing care. Consecutive absences are counted as one with a medical excuse. Claimant's fact-finding interview statement notes state:

I voluntarily quit (unaware of date- you should have all my records in your computer), due to lack of child care. My fiancée had our baby in October 2014, and we couldn't find child care – unaware of date. You can't find a babysitter for a newborn baby. I was calling in sick, and then just quit calling in. I was able and available to work as of the week I filed my unemployment claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 96.5(1) provides:

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.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Iowa Admin. Code r. 871-24.25(17) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(17) The claimant left because of lack of child care.

Even though the employer's evidence was not precise, given the vast discrepancy between the fact-finding interview statement and the hearing testimony, the claimant's version of the events is not considered credible. An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The September 15, 2015, (reference 06) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css