

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DULA L BACHARE**

Claimant

**APPEAL 16A-UI-06436-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 05/24/15**

**Claimant: Appellant (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 6, 2016 (reference 05) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit work because of a work-related medical condition and did not meet the requirements to receive benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 23, 2016. The claimant, Dula Bachare, participated. The employer, Swift Pork Company, did not answer when called at the hearing time and did not participate in the hearing. Claimant's Exhibit A was received and admitted into the record without objection.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a meat cutter from November 22, 2010 until this employment ended on May 8, 2016, when he quit.

Claimant got an injury at work. A machine cut his hand and he went to the hospital. He was diagnosed with a tendon injury. As a result of this injury, claimant will never be able to use one of the fingers on his left hand. Claimant's doctor told him that he could work a one-handed job and released him to return to work with this work restriction. Claimant told the employer that he could perform a one-handed job. Additionally, a representative from the employer went to this doctor's appointment with claimant and knows firsthand about the restriction he received. Claimant believes the employer has numerous jobs he could perform with only one hand.

After claimant was released to return to work, he worked for the employer for about one month. During this time, he was working with two hands, because the employer would not give him a one-handed job. This exacerbated claimant's pain and affected his sleep at night. The employer gave him conflicting information about whether he would ever receive an accommodation for his injury. If claimant had been given a one-handed job, he would have remained employed.

Claimant is currently looking for work. He is attempting to get his CDL. He is also looking for cleaning jobs in the Ottumwa and Des Moines area, as he believes he could perform cleaning work with one hand.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment for no disqualifying reason. He is able to and available for work. Benefits are allowed.

*Did claimant voluntarily quit the employment with good cause attributable to 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 Code § 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.26(4) and (6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Iowa Code § 216.6 (previously 601A.6) requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

Claimant returned to work from his work-related injury with a restriction that he could only perform one-handed work. Claimant was not immediately provided with this accommodation. Rather, he continued to perform two-handed work for at least one month, waiting for the employer to provide him with work that accommodated his restriction. The employer never provided claimant with one-handed work, and claimant performing two-handed work exacerbated his pain and adversely affected him. Claimant gave his employer ample notice of his restriction and a full opportunity to accommodate him. Claimant's decision to leave his employment was for good cause attributable to the employer.

*Is the claimant able to and available for work?*

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Claimant is able to work, and he is available for work. He is currently seeking cleaning positions, which he knows he can perform with one hand. Accordingly, benefits are allowed.

**DECISION:**

The June 6, 2016 (reference 05) decision is reversed. Claimant's separation from employment was with good cause attributable to the employer. The claimant is able to work and available for work effective May 8, 2016. Benefits are allowed.

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Elizabeth Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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