

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELFATIH A MOHAMADAIAN**  
Claimant

**APPEAL NO. 11A-UI-08010-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 05/01/11**  
**Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit  
Section 96.3-7 - Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 7, 2011, reference 01, that concluded Elfatih Mohamadaian's discharge was not for work-connected misconduct. A telephone hearing was held on July 27, 2011. The parties were properly notified about the hearing. Mohamadaian participated in the hearing with an interpreter, Yasin Sarayrah. Aureliano Diaz participated in the hearing on behalf of the employer.

**ISSUES:**

Did Mohamadaian voluntarily quit employment without good cause attributable to the employer?  
Was Mohamadaian overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Elfatih Mohamadaian worked full time for the employer as a production worker from April 5, 2010, to December 24, 2010.

Mohamadaian talked with his supervisor in November 2010 and requested two months off work so he could go to his home area in Sudan. His supervisor denied his request for two months off, but granted him a leave of absence for 45 days.

Mohamadaian left Iowa for Sudan on December 28, 2010. When he got to his village, he had to stay beyond his 45-day leave of absence because his sister was gravely ill. She died on February 28. His sister had two children, and he had to help arrange for their care. Mohamadaian had no communication with the employer to let them know about his personal problems and need to take more time off. There were no phones in the village.

When Mohamadaian failed to return to work and failed to notify the employer, the employer considered him to have quit employment.

Mohamadaian reported to the plant on March 30, 2011, and was told that he no longer had a job and needed to turn in his employee identification card.

The claimant filed for and received \$4,888.00 in benefits since he applied effective May 1, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The rules state that a leave of absence negotiated with the consent of the employer and employee is deemed a period of voluntary unemployment for the employee, and the employee is considered ineligible for benefits for the period. If the employee fails to return at the end of the leave of absence and becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(2)j.

In this case, Mohamadaian must be considered to have voluntarily quit employment without good cause attributable to the employer when he failed to report back to work after his 45-day leave and failed to obtain an extension of his leave of absence. Once he knew that he was not able to return to work, he should have found a way to contact the employer. The claimant could have sent a letter or found some other way of getting word to his employer about his situation. The provision of law that grants benefits to claimants who leave employment to care for a member of their immediate family would not apply here because a sister does not fall within the definition of immediate family member under 871 IAC 24.26(8).

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated June 7, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs