

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKIE J TVEDT
Claimant

APPEAL NO. 09A-UI-06186-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 8, 2009, reference 02, which held that no disqualification would be imposed regarding Jackie Tvedt's separation from employment. After due notice was issued, a hearing was held by telephone on May 18, 2009. Ms. Tvedt participated personally. The employer participated by Tony Luse, Employment Manager.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Tvedt was employed by Swift from December 8, 2008 until March 5, 2009 as a full-time production worker. On March 4, the company nurse sent her to a doctor because of complaints she had with her left hand. She was told to avoid lifting and/or clenching items weighing more than five pounds with her left hand. She was also to avoid twisting. Ms. Tvedt gave the written doctor's restrictions to her immediate supervisor and to the company nurse.

Ms. Tvedt felt her supervisor violated her doctor's restrictions on the afternoon of March 4 and the morning of March 5. Therefore, she walked off the job and quit on March 5. She did not at any point remind the supervisor that she was assigning her to work that violated the doctor's restrictions. She did not contact either the human resources department or the nurse's office for assistance in making sure her restrictions were being followed. Continued work would have been available if Ms. Tvedt had not quit.

REASONING AND CONCLUSIONS OF LAW:

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). Ms. Tvedt quit her job with Swift because she felt her supervisor was violating her doctor's restrictions. However, she made no effort to resolve the problem before quitting. The administrative law judge can appreciate why she may not have wanted to confront her supervisor over the issue. However, she could have gone to either the nurse or the human resources department to seek assistance. Once she made the decision to quit, she had nothing to lose by complaining to someone over her supervisor.

By not making the effort to resolve the issue that was causing her to quit, Ms. Tvedt deprived the employer of the opportunity to try to correct the situation by providing her with work that was within her restrictions. An employer cannot remedy a problem unless the problem is brought to its attention. Ms. Tvedt also testified that the doctor suggested she find different work. She did not make Swift aware that the work was causing problems to the extent that she might be required to quit. See Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). The employer was not put on notice that she needed some type of accommodation in order to avoid aggravating a medical condition. The company nurse would have no way of knowing that the problem with her hand was continuing unless Ms. Tvedt raised the issue.

For the reasons stated herein, the administrative law judge concludes that Ms. Tvedt did not have good cause attributable to the employer for quitting on March 5, 2009. As such, benefits are denied. She has received benefits since filing her 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 8, 2009, reference 02, is hereby reversed. Ms. Tvedt quit her employment on March 5, 2009 for no good cause attributable to the employer. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Tvedt will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs