

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHAEL A GIPE
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 14A-UI-04695-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/23/14
Claimant: Appellant (2)**

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 28, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 27, 2014. Claimant participated. Employer participated by Luis Meza. Exhibits were not admitted into evidence.

ISSUES:

The issues in this matter are whether claimant quit for good cause attributable to employer; whether claimant is on an approved leave of absence; and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 13, 2014. The employer states that claimant is still employed by employer, but has been placed on a leave of absence brought about by claimant's inability to work the third shift. Said inability to work the second or third shift is confirmed by a doctor's note. (Claimant's 2). Claimant denies that he is on a leave of absence, as his doctor has stated that his inability to work the third shift is permanent. Absent this inability to work certain hours, 8 p.m. to 6 a.m., claimant is fully ready to return to work.

Claimant had historically worked the third shift for employer as a dock supervisor. Claimant had health problems attributed to his working overnight hours and not having proper sleep pattern. Employer only had one dock supervisor position for each shift, and the first shift dock supervisor did not wish to give up his hours. Claimant and employer offered different testimony as to whether claimant was offered different employment possibilities within the first shift at or near the same pay scale he was currently receiving. But said employment opportunities were not job guarantees, and they were outside of the field of experience held by claimant.

When employer asked if claimant's affliction was temporary or permanent, claimant brought further documentation stating that the work restrictions were permanent. Employer continues to

view claimant as absent from work on a non-work-related leave of absence even though claimant has requested to be back at work and is not consenting to this leave.

REASONING AND CONCLUSIONS OF LAW:

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 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a 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.

- (1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2)j(1)(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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Evidence has established that claimant was separated from his job for good cause attributable to employer when claimant ceased the employment relationship because he was unable to get the dock supervisor job for the first shift. Employer offered claimant the opportunity to apply for other jobs in the first shift, but claimant chose not to pursue those opportunities as the employment was not guaranteed and claimant did not have experience in the areas offered. As such, claimant believed he was being set up to fail.

Even if claimant had initially agreed to go on a leave of absence, and the court has not been given information showing that to be the case, said agreement was not held by claimant after claimant had informed employer that his doctor stated his medical restriction as to hours was permanent. As employer only offered claimant the opportunity to apply for jobs – jobs for which claimant had no comparable experience – said offers cannot be seen as the granting of comparable employment.

Claimant has been able and available to work any job that is not from the hours of 8 p.m. to 6 a.m. since January 21. Since the date of claimant's job separation from employer he has been consistently and actively looking for employment.

DECISION:

The April 28, 2014, (reference 01) decision is reversed. Claimant is not simply on an ongoing leave of absence, but rather has a current separation from employment attributable to employer. Claimant does not wish to be on a leave of absence. Claimant has not been offered comparable, suitable work although he is able and available to work. Claimant's leave of absence is not in effect after employer's receipt of the January 21, 2014 document from claimant's doctor. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css