IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

LIVIANETTE GUZMAN Claimant **SWIFT PORK COMPANY** Employer	**APPEAL 21A-UI-07729-JC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/24/21** **Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant, Swift Pork Company, filed an appeal from the March 4, 2021 (reference 01) Iowa Workforce Development ("IWD") unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 26, 2021. The claimant, Livianette Guzman, did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Henry Brown, assistant human resources manager.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a general laborer and was separated from employment on December 10, 2021. Claimant last physically worked on November 16, 2020.

Claimant was issued a final attendance warning on September 17, 2020, which included a 90 day probation (Employer Exhibit 1). Employer stated it also has a no call/no show policy, which states after three consecutive no call/no shows, an employer will consider an employee to have abandoned the job and separation will ensue.

Claimant last physically worked on November 16, 2020. On that day, claimant was moved from sanitation to a kill floor position requiring the usage of knives. Claimant informed employer she had an injury to her hand which prevented her from being able to do the job. Employer stated as a "non-job-owner", claimant was expected to move to whichever position employer directed her to work. Claimant had worked previously on the kill floor, in packaging and in sanitation. Employer told claimant they had no restriction on file for her hand, so she must do the job. Claimant said she would try the job and if she could not do it, she would quit.

Claimant reported to the IWD fact-finder that she tried to do the job and ended up at the hospital with pain. Her husband, who also worked for the employer, brought in a doctor's note and updated employer on claimant. Employer stated claimant did not call in her absence 30 minutes prior to her shift and was a no call/no show each day until December 10, 2020, when employer determined separation had ensued.

The administrative record reflects that claimant has received unemployment benefits in the amount of $1,593.00, since filing a claim with an effective date of January 24, 2021. The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC).

The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the

circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

Iowa Admin. Code r. 871-24.26(1) 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:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993).

While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address her concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

Employer in this case did not follow any no call/no show policy inasmuch as claimant remained an active employee for almost month following her last day on the job. In this case, claimant was moved from a sanitation position to a position on the kill floor involving knives. While claimant may have been required to float or move from position to position as needed by the employer, claimant notified employer she was uncomfortable with the position because of an injury that prevented her being able to safely use the knives required for the job. This was not a case of personal preference, but rather a safety issue. If claimant attempted the job and could not grip the knives or control them, serious harm could have occurred.

Employer responded by saying claimant did not have a restriction in the file and must do the job. Claimant may not have needed a restriction in her file prior to that day because her position in sanitation did not require the use of knives. Employer gave claimant no opportunity to consult a doctor, but instead gave her an ultimatum. According to claimant's statement to the IWD fact-finder, she tried to do the position and ended up visiting the hospital due to pain. Based on the credible evidence presented, the administrative law judge is persuaded a reasonable person would quit the job under these circumstances. Accordingly, the claimant quit the employment with good cause attributable to the employer. Benefits are allowed.

Because the claimant is allowed regular state benefits, she is also eligible for FPUC benefits. FPUC are not charged to employers. The issues of overpayment and relief of charges are moot.

DECISION:

The March 4, 2021 (reference 01) initial decision is AFFIRMED. Claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed. There is no overpayment. Employer is not relieved of charges.

Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

June 10, 2021
Decision Dated and Mailed

jlb/kmj