

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VALERIAN BASILIUS
Claimant

APPEAL NO: 10A-UI-15166-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY / JBS
Employer

OC: 10/03/10

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Valerian Basilius (claimant) appealed a representative's October 28, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Swift & Company/JBS (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 13, 2010. The claimant participated in the hearing. The employer's representative received the hearing notice and responded by calling the Appeals Section and providing a name and telephone number of a witness to participate on behalf of the hearing. However, when the administrative law judge called the employer at the scheduled time for the hearing, the employer indicated it was not going to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 1, 2008. He worked full time as an operator on the second shift in the employer's Marshalltown, Iowa facility. His last day of work was on or about June 26, 2010. He began a week vacation period on June 28, to return to work on July 5. However, he was incarcerated in the local county jail on or about July 1, 2010 through on or about September 24, 2010. The charges pending against the claimant were resolved through a plea agreement, which included credit for time served.

After his release from jail, the claimant contacted the employer seeking to return to work. However, the employer considered his employment terminated because of his extended absence from work.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. However, an employee is also deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). Benefits are denied.

DECISION:

The representative's October 28, 2010 decision (reference 01) is affirmed. The claimant is deemed to have voluntarily left his employment without good cause attributable to the employer. As of July 5, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css