

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA K TEMPLE
Claimant

APPEAL NO. 08A-UI-03250-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 02-24-08 R: 03
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 27, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on April 16, 2008. The claimant did participate along with her witness Nicole Temple, her granddaughter. The employer did participate through Tony Luse, Employment Manager. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged due to job-related misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker on the loom line full time beginning November 29, 2006 through February 22, 2008 when she was discharged.

The claimant was off work due to non-work-related illness beginning in December 5, 2007. She was also being treated for some psychiatric issues by Dr. Doumanian, M.D. who authorized the claimant to be off work until February 6 when she was to return to work.

The claimant did not return to work on February 6, 7 or 8. On February 8, the claimant called the employer to inquire how much time she had remaining under FMLA. At that time she was told that the note the Dr. Doumanian had faxed to them on January 16 indicated the claimant was to return to work on February 6 and that as of February 8 the employer considered the claimant a three-day no-call/no-show in violation of their attendance policy.

The claimant told the employer that she had not been told by Dr. Doumanian when she was to return to work and that she would attempt to get Dr. Doumanian to excuse her absences for February 6, 7 and 8. The claimant contacted Dr. Doumanian's office and asked her to provide an excuse for February 6, 7 and 8. Dr. Doumanian refused to provide the needed excuse. The claimant had visited Dr. Doumanian's office on January 16 and again on February 4.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

Iowa Code section 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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. The claimant knew that she was off work due to a doctor's excuse and that it would be up to her physician to determine how much time she should be off work. The claimant had ample opportunity on both January 16 and February 4 to ask her doctor how long she had been taken off work. The claimant's failure to obtain from her physician her excused dates is not good cause attributable to the employer for her failure to report for work. Benefits are withheld.

DECISION:

The March 27, 2008, reference 02, decision is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such

time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css