

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANA M GUDINO**

Claimant

**APPEAL NO. 09A-UI-05551-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**

Employer

**OC: 03/01/09**

**Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Ana Gudino (claimant) appealed a representative's April 2, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 6, 2009. The claimant participated personally through Anna Pottebaum, Interpreter. The employer participated by Tonya Box, Human Resources Assistant.

**ISSUE:**

The issue is whether the claimant was separated from work for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 5, 2006, as a full-time laborer.

The claimant requested and was granted Family Medical Leave (FMLA) from December 4, 2008 through February 16, 2009. The claimant did not appear for work after February 16, 2009, and the employer assumed she voluntarily quit work.

The claimant had a physician's note which excused her from working through February 26, 2009. She did not give this to the employer until February 26, 2009. The claimant's doctor gave the claimant a note on February 26, 2009, stating the claimant would return to work on March 3, 2009, but did not state a reason. The claimant thought the note was given to her so she could stay home with her ill daughter.

The claimant did not daily report her absences from February 16 to March 2, 2009. The employer assumed the claimant quit work when she did not contact the employer after February 16, 2009.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work 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 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. She stopped appearing for work. When an employee stops work after a leave of absence, her leaving is without good cause attributable to the employer. The claimant left work to take a leave of absence and then did not return when released to do so by her physician or notify the employer her absences. The claimant's refusal to return to work or notify the employer of her absences after the expiration of her leave constitutes a voluntary quit. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is the claimant's availability for work.

871 IAC 24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

When an employee requests and is granted time off, she is considered to be unavailable for work. The claimant requested FMLA and the employer granted her request. The change in hours was initiated by the claimant. She is considered to be unavailable for work through February 16, 2009.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant's physician restricted her from work through March 3, 2009. She is considered to be unavailable for work until March 3, 2009. The claimant is disqualified from receiving unemployment insurance benefits until March 3, 2009, due to her unavailability for work.

**DECISION:**

The representative's April 2, 2009 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is disqualified from receiving unemployment insurance benefits until March 3, 2009, due to her unavailability for work.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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