

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SANTOS CHAVEZ**

Claimant

**APPEAL NO. 08A-UI-09216-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**

Employer

**OC: 07/20/08 R: 02  
Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Swift & Company filed an appeal from a representative's decision dated September 30, 2008, reference 01, which held that no disqualification would be imposed regarding Santos Chavez' separation from employment. After due notice was issued, a hearing was held by telephone on October 28, 2008. The employer participated by Tonya Box, Human Resources Assistant. Mr. Chavez did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Mr. Chavez was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Chavez began working for Swift on October 29, 2007. He was employed full time as a production worker. He reported to work at his usual start time of 6:42 a.m. on July 1, 2008. He was sent home and told to return at 8:30 a.m. to meet with the employer. He did not return for the meeting and did not notify the employer he would be unable to attend. The employer did not hear further from him until some point after July 7.

The purpose of the July 1 meeting was to discuss Mr. Chavez' attendance. The employer intended to decide whether to place him on probation for 90 days or discharge him. No determination had been made when he stopped reporting for available work without notice. Mr. Chavez received the employee handbook, which indicated that three consecutive unreported absences could result in separation from employment.

Mr. Chavez filed a claim for job insurance benefits effective July 20, 2008. He has received a total of \$4,493.55 since filing the claim.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that Mr. Chavez abandoned his job when he stopped reporting for available work. He may well have been discharged during the July 1 meeting. However, there was also the possibility he would have been placed on probation rather than discharged. By not attending the meeting and not returning to work, Mr. Chavez did not allow the employer an opportunity to make a decision regarding his continued employment. Since continued work was available when he left the employment, his separation is a voluntary quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any good cause attributable to the employer for Mr. Chavez' quit. Because he did not have good cause for quitting, he is not entitled to job insurance benefits.

Mr. Chavez has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Chavez will be required to repay benefits already received.

**DECISION:**

The representative's decision dated September 30, 2008, reference 01, is hereby reversed. Mr. Chavez voluntarily quit his employment with Swift for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Chavez will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw