

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARIBEL NAVARRO**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 21A-UI-00537-SN-T**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**OC: 07/26/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 17, 2020, (reference 02) unemployment insurance decision that denied benefits based upon the conclusion she voluntarily quit for personal reasons. The parties were properly notified about the hearing. A telephone hearing was held on February 9, 2021 at 3:00 p.m. The claimant participated and testified. The administrative law judge took official notice of the administrative records.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a box label pallet worker from August 28, 2007, until she was separated from employment on July 3, 2020, when she was terminated. The claimant's immediate supervisor was Erica Kenth.

On June 5, 2020, the claimant was exposed to Covid19. At the same time, the claimant's mother was hospitalized because she was infected with Covid19. The claimant was instructed to remain away from work until June 19, 2020. The employer paid the claimant for the two weeks she was on quarantine.

In mid-June 2020, the claimant began experiencing severe migraines and low back pain. The claimant spoke to Pearl (last name unknown) in the Human Resources Department about Family Medical Leave Act leave. Pearl sent the claimant forms to fill out which were completed by her family care physician later that week.

On June 29, 2020, the claimant was approved for intermittent Family Medical Leave Act (FMLA) leave. The claimant was allowed to take three days of leave per month and up to two days of leave per month under the plan. It did not have a return date because it was an intermittent

leave approval. The claimant was not required to get a release from her physician to return to work.

On July 2, 2020, the claimant received a call (name unknown) from the employer's Human Resources Department. On the call, the agent asked the claimant if she was feeling better and if she planned on returning to work. In response, the claimant told the agent she would try going back to work when she felt better. The agent explained that she wanted to make sure the claimant would be coming back to work at some time. The agent did not tell the claimant she was going to receive discipline at that time.

On July 24, 2020, the claimant called the employer's Human Resources Department and discovered that she had been terminated on July 3, 2020. The claimant was told she had been terminated for accruing excessive absenteeism points. The claimant had been calling in to the employer's Human Resources Department to inform them about her absences until July 24, 2020. The employer did not issue her a warning prior to terminating her employment.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was with 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.

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

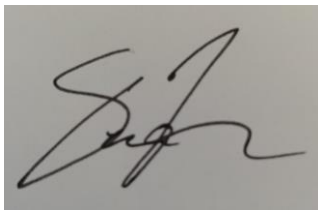
Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction*

*Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

In this case, the claimant was terminated while she was on intermittent FMLA leave. The claimant intended to return but was unable to because of her migraines and back pain. Before the claimant could return to work, the employer terminated her. Benefits are granted.

**DECISION:**

The November 17, 2020, (reference 02) unemployment insurance decision is reversed. Benefits are granted.



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Sean M. Nelson  
Administrative Law Judge  
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March 8, 2021  
Decision Dated and Mailed

smn/mh