

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDON R BEACH**

Claimant

**APPEAL NO: 11A-UI-13177-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 01/02/11**

**Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Tyson Fresh Meats, Inc. (employer) appealed a representative's September 26, 2011 decision (reference 03) that concluded Brandon R. Beach (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 6, 2011. The claimant received the hearing notice and responded by calling the Appeals Section and indicating that he would be available at the scheduled time for the hearing at a specified telephone number. When the administrative law judge called that number at the scheduled time for the hearing, the claimant did answer. Contrary to the recommendation on the hearing notice instructions, the claimant's phone was a cell phone. Shortly after the hearing was convened, the claimant's connection was lost or disconnected. The administrative law judge attempted to recontact the claimant, but he did not answer his phone and did not recontact the Appeals Section; therefore, the claimant did not participate in the hearing. Steve Widler appeared on the employer's behalf and presented testimony from one other witness, Tim Milder. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit for a good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 5, 2011. After three days of orientation, he worked full time as an in-feed box loader at the employer's Columbus Junction, Iowa facility. His last day of work was July 20, 2011.

On July 20 the claimant left the facility at about 11:00 a.m. at the regular lunch break. However, he did not return after lunch. He was then a no-call/no-show for work on July 21 and days thereafter. When the claimant had not called or reported for work by July 27, the employer considered the claimant to have voluntarily quit by job abandonment and removed him from the employee system.

The claimant's job was not in any jeopardy prior to his departure on July 20 and he had not indicated any concerns or problems to the employer.

The claimant established an unemployment insurance benefit year effective January 2, 2011. He reopened the claim by filing an additional claim effective September 4, 2011.

**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.

Rule 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. A person who quits employment without good cause attributable to the employer must be disqualified from further benefits even if that person has given up unemployment insurance benefits to accept the work which was then considered unsuitable. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's September 26, 2011 decision (reference 03) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 20, 2011, 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.

The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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