

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABATHAN, KODJO, K
Claimant

APPEAL NO. 10A-UI-14232-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 09/19/10
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 12, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 1, 2010. Claimant participated. Eloise Baumgartner represented the employer. Exhibits A, B, and C were received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker and last performed work for the employer on July 28, 2010. Thereafter, the claimant called in absences due to illness during the next week, August 2-6, though the claimant was not ill.

In June, the claimant has spoken to the employer about his desire to travel to Africa, where his grandfather was ill. The employer ultimately approved a three-week leave of absence to commence August 10, 2010. Three weeks from August 10 would have been August 31. The claimant traveled to Africa and his grandfather soon recovered. The claimant elected to stay in Africa for weeks after his grandfather recovered. The claimant did not return to the employer until September 19, 2010, at which time the employer told him the employment was deemed terminated.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. While the weight of the evidence establishes an approved three-week leave of absence to start August 10, 2010, the weight of the evidence also indicates that the claimant failed to return to the employment at the end of the approved three-week period. Instead the claimant delayed his return by about another three weeks. A person who fails to return to work at the end of an approved leave of absence is deemed to have voluntarily quit the employment. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

DECISION:

The Agency representative's October 12, 2010, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css