

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**AYOM D YELL  
3451 GRAND AVE APT 7  
DES MOINES IA 50312-4144**

**TYSON FRESH MEATS INC  
C/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-02429-JTT  
OC: 01/22/06 R: 02  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) - Voluntary Quit  
Section 96.3(7) - Recovery of Overpayment

STATEMENT OF THE CASE:

Tyson Fresh Meats filed a timely appeal from the February 17, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 20, 2006. Claimant Ayom Yell participated with the assistance of an interpreter, Francis Chan. Employment Manager Tom Barragan represented the employer. The administrative law judge took official notice of Agency records regarding benefits disbursed to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ayom Yell was employed by Tyson Fresh Meats as a full-time first shift production worker from August 9, 2004 until November 28, 2005, when the employer concluded that he had abandoned the

employment. The claimant last appeared and worked a shift on November 16, 2005. The claimant left work early that day due to illness and with the approval of the employer. The claimant was absent on November 17 and 18 for illness properly reported to the employer. The claimant was then absent without notifying the employer for his shifts on November 21, 22, 23, 25, 26, and 28. The employer has a written policy that an employee will be deemed to have quit the employment if he or she is absent without notifying the employer for five consecutive shifts. The employer's attendance policy required Mr. Yell to notify the employer at least 30 minutes prior to the start of a scheduled shift if he needed to be absent from the shift. These policies were reviewed with the claimant at the time of hire and were translated into the claimant's native language to ensure that he understood the policies. The employer waited until Mr. Yell had been absent six shifts without notifying the employer before the employer invoked the voluntary quit policy.

On November 17, Mr. Yell had visited a doctor in connection with back pain and pain in his joints. The doctor had provided Mr. Yell with a medical excuse that excused him from work for two weeks. Mr. Yell was able to notify the employer by telephone about his need to be absent and about the medical excuse for the absence, but elected not to do so. Mr. Yell did not provide the employer with the medical excuse until December 5, 2005, when he attempted to return to the employment.

Mr. Yell established a claim for benefits that was effective January 22, 2006 and has received benefits totaling \$1,465.00.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Yell voluntary quit the employment without good cause attributable to the employer. It does.

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 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The evidence in the record establishes that Mr. Yell was absent for six shifts without notifying the employer before the employer invoked its written policy and deemed the absence a voluntary quit. The employer waited one extra day before invoking its written policy and three extra days beyond the three missed shifts the law requires to establish a voluntary quit. The evidence establishes that Mr. Yell was aware of the employer's policy and aware of his obligation to notify the employer of an absence. Mr. Yell had demonstrated the ability to notify the employer regarding absences, but elected not to do so in connection with the six missed shifts that led the employer to conclude he had abandoned the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Yell voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Yell 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 Mr. Yell.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The \$1,465.00 in benefits Mr. Yell has received constitutes an overpayment the law requires Mr. Yell to repay.

DECISION:

The Agency representative's decision dated February 17, 2006, reference 01, is reversed. 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. The claimant is overpaid \$1,465.00.

jt/kkf