

**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**

**MARIA R KOTSIOMITIS
1405 ALBIA RD #23
OTTUMWA IA 52501**

**TYSON FRESH MEATS INC
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-07670-DWT
OC: 06/20/04 R: 03
Claimant: Appellant (1)**

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 are 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Maria R. Kotsiomitis (claimant) appealed a representative's July 12, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 11, 2004. The claimant participated in the hearing. Jim Petzholdt, the human resource manager for the Storm Lake facility, appeared on the employer's behalf. Suzie translated the hearing. Based on the evidence, the arguments of the parties, 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 her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on February 1, 2000. She worked as a full-time hourly employee on the day shift.

The claimant's job was not in jeopardy on June 17, 2004. In April 2004, the claimant told her supervisor she was thinking about moving out of state when the claimant thought she was going to be disciplined. Later the claimant told her supervisor she was not planning to move.

The last three months of her employment the sister of the departmental interpreter began working in the same department as the claimant. The claimant complained that this new employee was not doing her share of the work. The employer told the claimant's supervisor to monitor the work done in the claimant's area.

The claimant also reported that the new employee made a profane, derogatory remark to the claimant. The employer investigated and talked to employees the claimant believed would verify her report. When the employer talked to these employees, they reported they had not heard the new employee make any derogatory remark to the claimant. The claimant believed her co-workers laughed at her and taunted her. The claimant became so upset one day that she went to the employer's nurse. The claimant was very nervous when the new employee walked by her. The claimant believed the new employee laughed like Santa Claus as she walked past the claimant just to harass the claimant. After the claimant made a second complaint, the employer temporarily assigned the claimant to another area. The claimant worked in the new area for three days. The claimant called the employer's corporate office and reported problems but it is not known when she made this report. The Storm Lake facility was not asked to investigate any complaint the claimant reported to the corporate office.

At the end of her shift on June 17, 2004, the claimant turned in her knives and indicated she was quitting effective immediately because she was moving to Des Moines. The claimant did not say she was quitting because of repeated problems with a co-worker.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant voluntarily quit her employment on June 17, 2004. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant quits without good cause when she leaves employment to relocate or because of dissatisfaction with the work environment. 871 IAC 24.25(2) and (22). The law, however, presumes a claimant quits employment with good cause because of detrimental or intolerable working conditions. 871 IAC 24.26(4).

The facts establish the claimant complained about a co-worker and the employer investigated her complaints. As a result of the claimant's complaint concerning a derogatory remark, the claimant was temporarily moved to another job. The facts do not indicate when the claimant worked the other job for three days but it had been in the last two weeks that the claimant

reported the derogatory remark. When the co-workers whom the claimant indicated would substantiate her report indicated they had not heard the derogatory comment, the employer had no idea who to believe. The "offending" co-worker denied making any derogatory comment about the claimant.

The claimant felt other employees laughed at her and she was uncomfortable working with the new employee. If the claimant truly quit because a co-worker harassed her, it is difficult to understand why she did not state this as a reason for quitting instead of saying she was moving to Des Moines. The employer understood the claimant quit because she was moving out of the area. If the claimant quit because of problems with a co-worker, she did not tell the employer that problems between the claimant and the co-worker were so bad she would have to quit.

Based on the claimant's June 17 reason for resigning, the evidence indicates the claimant quit to move out of the area. The claimant established compelling personal reasons for quitting. Her reasons do not, however, qualify her to receive unemployment insurance benefits. As of June 20, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 12, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 20, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/b