

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUIS E ZUNIGA
Claimant

APPEAL NO. 13A-UI-00991-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 12/09/12
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. filed a timely appeal from a representative's decision dated January 16, 2013, reference 02, which held claimant eligible to receive unemployment insurance benefits finding that he quit work because of a change in the agreement under which he was hired. After due notice was provided, a telephone hearing was held on February 26, 2013. Claimant participated. Employer participated by Mr. Ben Torres. Official Interpreter was Ms. Blanca Jadow.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Luis Zuniga left his employment with Tyson Fresh Meats, Inc. on December 7, 2012 because the company was not paying him at the same rate of pay for the same duties that he had previously received under similar circumstances. Mr. Zuniga had been allowed to leave employment with Tyson Fresh Meats, Inc. and to work construction during the construction season and subsequently had been allowed to return to work after his construction work had come to an end. Claimant normally had been paid at a specified rate per hour for his work in the slaughter department. When the employer was unwilling to pay Mr. Zuniga at the normal rate that he had previously received under similar circumstances, Mr. Zuniga considered it to be a substantial change in the agreement between the parties and left employment.

It is the employer's position that the claimant was not eligible to receive the higher rate per hour as he had not been a full-time employee in that position for three months.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant left employment with 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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The evidence in this matter establishes that Mr. Zuniga had previously worked for Tyson Fresh Meats, Inc. in the same slaughter department job at a higher rate of pay and had not been required to wait a three-month period before receiving the higher rate. When the claimant most recently returned to employment with Tyson Fresh Meats, Inc., he reasonably expected to be paid at the previous rate as the employer had done so in the past without making him wait three months before the higher pay was available to the claimant.

The claimant left his employment on December 7, 2012 based upon what he reasonably considered to be a substantial change in the agreement of hire between the parties. Good cause attributable to the employer has been shown. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 16, 2013, reference 02, is affirmed. Claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs