

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BENNETT O AKATA Claimant TYSON FRESH MEATS INC Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO. 09A-UI-00514-JTT</div> <div>ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 11/16/08 R: 02 Claimant: Appellant (2)</div>
--	--

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Bennett Akata filed a timely appeal from the January 12, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 11, 2009. Mr. Akata participated. Eloisa Baumgartner, Employment Manager, represented the employer.

This matter had originally been set for appeal hearing on January 28, 2009 at 2:00 p.m. Mr. Akata appeared at that time, but the employer representative was not available at the number the employer provided for the hearing. Early in the proceedings, the administrative law judge concluded it would be better to have the assistance of an interpreter. Mr. Akata's native language is Ogoni, native to a relatively small population (500,000) in southeast Nigeria. After the Appeals Section was unable to locate an Ogoni-English interpreter, the administrative law judge had the matter reset for appeal hearing on February 11, 2009.

ISSUES:

Whether the claimant's voluntary quit was for good caused attributable to the employer.

Whether the claimant voluntary quit the employment for the purpose of accepting new employment and performed work for the new employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Bennett Akata was employed by Tyson Fresh Meats as a full-time laborer from March 8, 2004 until October 1, 2008, when he voluntarily quit. Mr. Akata worked on the kill floor. Mr. Akata's supervisor was Brian Jackson, Kill Floor General Supervisor. Mr. Akata quit the employment because his line supervisor, Robert, and Mr. Jackson denied his requests to use the restroom. Mr. Akata observed that other employees were allowed to use the restroom as needed and were also allowed to get water as needed. Mr. Akata's line supervisor would make Mr. Akata wait until one of the two scheduled breaks or wait until the end of the work day to use the restroom or get a drink. Mr. Akata started work at 7:45 a.m. Mr. Akata received a 15-minute break at 10:00 a.m. Mr. Akata received a 30-minute lunch break at 1:00 p.m. Mr. Akata would then work until production ceased, sometime between 4:00 p.m. and 5:30 p.m. The

supervisor's refusal to allow Mr. Akata necessary restroom breaks occurred over the course of several days. Mr. Akata told the supervisor(s) he was quitting because of the disparate treatment. The employer documented Mr. Akata as a no-call, no-show for shifts on October 6-10, 2008, before the employer recorded a voluntary quit.

Prior to leaving the employment, Mr. Akata had established an employment relationship with U.S.A. Staffing, a temporary employment agency. At the beginning of September 2008, Mr. Akata performed work in a one-day assignment. At or about the time Mr. Akata ceased appearing for work at Tyson Fresh Meats, Mr. Akata started a new temporary employment work assignment. Mr. Akata's application for unemployment insurance benefits on November 16, 2008, was prompted by his separation from the temporary employment assignment.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

When a person voluntarily quits the employment due to dissatisfaction with the work environment or inability to work with other employees, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21) and (6).

The employer has not presented any testimony from persons with firsthand knowledge about Mr. Akata's day-to-day work environment. Accordingly, the evidence regarding the day-to-day work environment is limited to Mr. Akata's testimony. The supervisors' ongoing denial of requested and necessary bathroom breaks and/or water breaks constituted intolerable and detrimental working conditions that would have prompted a reasonable person to quit the employment. Accordingly, the administrative law judge concludes that Mr. Akata voluntarily quit the employment for good cause attributable to the employer. Mr. Akata is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Akata.

Even if the administrative law judge had concluded that Mr. Akata's voluntary quit was without good cause attributable to the employer, Mr. Akata would still not be disqualified for benefits

because he quit the employment to accept work with a new employer and performed work for the new employer. See Iowa Code section 96.5(1)(a).

DECISION:

The Agency representative's January 12, 2009, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs