

**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**

**HILDA K VARGAS  
446 W GAGE AVE  
LOS ANGELES CA 90003**

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

**Appeal Number: 04A-UI-12403-DT  
OC: 10/17/04 R: 01  
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, 4<sup>th</sup> 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 Leaving

STATEMENT OF THE CASE:

Hilda K. Vargas (claimant) appealed a representative's November 12, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2004. The claimant participated in the hearing. Jim Petzoldt appeared on the employer's behalf. Rosemary Paramo-Ricoy served as interpreter. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 24, 2002. She worked full time as an hourly production worker in the employer's Storm Lake, Iowa pork slaughter and processing facility. Her last day of work was October 7, 2004, at which time she was working a schedule of 6:15 a.m. to at least 2:45 p.m. As of October 7, the claimant had 13.5 attendance points. Discharge normally occurs at 14 points. The employer's policy also provides that at that stage a three-day no-call/no-show is considered to be a voluntary quit.

The employer's records show that the claimant called in sick at 6:05 a.m. on October 8; the employer treated this as a late call, since it was not within 30 minutes prior to the start of the shift, and so assessed the claimant three points, which would bring the claimant to 16.5 points. The claimant denied that she called in late, but rather that she actually physically went to the facility at approximately 5:45 a.m. and told her supervisor she was going to be out sick. This would still have resulted in an absence and one point, so she would have been at 14.5 points. The claimant was then a no-call/no-show on October 11, October 12, and October 13. She sought to report to work on September 14, but at that time she was told that her position was no longer available to her.

On or about October 1, the claimant had notified her supervisor that her last day of work would be November 1, as she would be quitting to care for her child.

The claimant established an unemployment insurance benefit year effective October 17, 2004. She filed no weekly claims for unemployment insurance benefits until she reopened her claimant effective November 7, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). A three-day no-call/no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). The claimant did exhibit the intent to quit and did act to carry it out. Further, the claimant had specifically stated her intent to quit as of November 1,

2004 for personal reasons. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. The claimant has not satisfied her burden. Even if the separation was construed as a non-disqualifying discharge as of October 14 in advance of the November 1 quit, the only potential period of eligibility would be the weeks between October 14 and November 1, for which the claimant filed no weekly claims. Benefits are denied.

**DECISION:**

The representative's November 12, 2004 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of October 14, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

ld/pjs