

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

KIM L DANG
2011 - 7TH AVE
COUNCIL BLUFFS IA 51501

TYSON FRESH MEATS INC
C/O TALX – UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-06422-SWT
OC: 05/15/05 R: 01
Claimant: Respondent (1-R)

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 8, 2005, reference 01, that concluded the claimant left employment due to a work-related medical problems. A telephone hearing was held on July 20, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Tom Dang, and the assistance of an interpreter, Wenn Pham. Susan Pfeifer participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a box product worker in the pork-packaging department from December 8, 2003, to April 28, 2005. The claimant was informed and understood that under the employer's work rules, employees who were absent without notice

for three work days and who accumulated 14 attendance points were considered to have voluntarily terminated their employment.

The claimant's job involved working in a cold, refrigerated environment. In April 2005, the claimant began experiencing problems with numbness and discoloration of her hands that was aggravated by the cold conditions at work. She went to the nurse's station at work but nothing was done to relieve her problems. She was examined by Farid Sadr, M.D., who advised the claimant to leave her job due to the cold conditions at work.

The claimant spoke to the human resources manager about her medical problems but was told that she would have to bid to get a job in a warmer area of the plant. The human resources manager also stated that there was no place in the plant where workers were not exposed to some cold conditions.

The claimant was off work with a doctor's excuse from April 26 to May 1, 2005. Someone brought in a medical excuse covering her absences on April 30, 2005. The claimant was considered absent without notice on April 29, May 1, and May 2, 2005. Under the employer's attendance policy, she had a total of 15 points after missing work on May 2, 2005. The employer, therefore, considered the claimant to have voluntarily terminated her employment.

The claimant returned to work on May 11, 2005, and attempted to get her job back but was told her employment had been terminated due to her absences since April 29, 2005.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 15, 2005. The claimant continues to have medical problems despite her being off work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without 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.

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that she will have to quit if the problem is not corrected or condition is not accommodated. 871 IAC 24.26(6)b.

The preponderance of the evidence establishes that the claimant has met the conditions for eligibility under 871 IAC 24.26(6)b. The biggest problem in this case is the evidence from both parties was shaky at best. The claimant and her witness were uncertain about dates. The employer was unaware until the hearing about a medical excuse submitted on April 30, 2005,

covering some of the days on which the claimant was considered absent without notice. The human resources manager recalled a conversation with the claimant about the cold environment at work but was uncertain when it happened. The bottom line is that the claimant had a serious health condition aggravated by working conditions verified by a medical professional and discontinued working after requesting an accommodation from the employer.

The claimant testified that she continues to have serious medical problems that interfere with her ability to work. Although the issue of whether the claimant was able to and available for work as listed on the hearing notice, the record is not sufficient to make a decision as to whether the claimant is able to work. This matter is remanded to the Agency to investigate and make a determination. A request for medical information should be sent to her treating physician, Farid Sadr, M.D., at the Alegent Health Clinic, 2201 W. Broadway, Suite 9, Council Bluffs, Iowa 51501-3605, or to another physician designated by the claimant who has treated the claimant for her current medical condition.

DECISION:

The unemployment insurance decision dated June 8, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The issue of whether the claimant is able to and available for work is remanded to the Agency for an investigation and determination.

saw/pjs