

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAMON DELATORRE
Claimant

APPEAL NO. 08A-UI-00500-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 12/09/07 R: 01
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Ramon Delatorre filed an appeal from a representative's decision dated January 3, 2008, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on January 30, 2008. Mr. Delatorre participated personally. Sara Gardner participated as the interpreter. The employer did not respond to the notice of hearing.

ISSUE:

The first issue is whether Mr. Delatorre's appeal should be considered timely filed. If it is, the issue then becomes whether he was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Mr. Delatorre at his address of record on January 3, 2008. He was in Mexico from December 20 until January 15. He filed his appeal on January 16, 2008.

Mr. Delatorre was employed by Tyson from May until December 10, 2007 as a full-time production worker. He quit the employment because of a threat from another employee and because he did not feel he was receiving the breaks required by the union contract. The coworker threatened Mr. Delatorre with physical harm if he spoke to the employer regarding his work habits. Thereafter, the individual would follow Mr. Delatorre around the workplace for no apparent reason. He complained to the employer about the individual but there were no changes made in his conduct. Mr. Delatorre asked to be switched to a different department or a different shift but was told it could not be done.

Mr. Delatorre did not always get the 15-minute breaks required by the union contract. He spoke to management about the problem but it was not corrected. Because he did not feel the employer was being responsive to his complaints, he quit on December 10, 2007.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Mr. Delatorre's appeal should be considered timely filed. He was out of the country when the decision was mailed and had not returned as of the date his appeal was due. For this reason, he could not have perfected his appeal by the January 13, 2008 deadline. He returned to Iowa on January 15 and filed his appeal the following day. Because Mr. Delatorre filed his appeal immediately after his return, the appeal filed on January 16, 2008 shall be considered timely filed.

Mr. Delatorre voluntarily left his employment with Tyson. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Delatorre quit because he was threatened and harassed by another employee. He brought his concerns to the employer's attention but no effective steps were taken to resolve the problem. The employer was either unable or unwilling to move him to a different shift or department.

Pursuant to Iowa Code section 96.6(2), the employer had the burden of proving that Mr. Delatorre should be disqualified from receiving benefits under Iowa Code section 96.5. The evidence establishes to the satisfaction of the administrative law judge that Mr. Delatorre quit because of a detrimental or intolerable working condition as contemplated by 871 IAC 24.26(4). As such, he is entitled to job insurance benefits.

DECISION:

The representative's decision dated January 3, 2008, reference 01, is hereby reversed. Mr. Delatorre quit his employment with Tyson for good cause attributable to the employer. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs