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

WILLIAM E MARTIN JR
3185 S AVE
WINFIELD IA 52659

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

Appeal Number: 04A-UI-03883-RT
OC: 03-07-04 R: 04
Claimant: Appellant (2)

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 Quitting

STATEMENT OF THE CASE:

The claimant, William E. Martin, Jr., filed a timely appeal from an unemployment insurance decision dated March 25, 2004, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on April 28, 2004 with the claimant participating. The employer, Tyson Fresh Meats, Inc., did not participate in the hearing because the employer did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the notice of appeal. The employer was represented by TALX UC eXpress, which is well aware of the need to call in a telephone number in advance of the hearing if the employer wants to participate at the hearing. Claimant's Exhibit A was admitted into evidence. The administrative

law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full-time roundsman from July 1990 until he voluntarily quit on February 7, 2004. On that day the claimant was quite busy with a boiler down and he had to go out and shut off the water wells. This requires that the claimant drive out about a mile in the snow. The claimant informed the general supervisor, Ronald Wayland, that he had a boiler down and would have to shut off the wells. Mr. Wayland told the claimant that the claimant did not have a problem that the boiler was all right. The claimant asked Mr. Wayland to come down and take a look at the boiler because the claimant could not fix it. Mr. Wayland did come down to where the claimant was but went into another room. The claimant went in and asked Mr. Wayland to look at the boiler but he refused to do so. The claimant then said he was going to have to go out and shut off the wells. The claimant did so and while out shutting off the wells Mr. Wayland called him on the radio and was angry and yelling at him and told him to get back in to the plant because he had other things to do. At that time the claimant was finally frustrated with dealing with Mr. Wayland and told Mr. Wayland that he was leaving the plant. The claimant did not want any further confrontation or risk any kind of physical confrontation with Mr. Wayland.

The claimant had been an employee performing work as a roundsman since 1990. The claimant's direct supervisor and to whom he reported directly was Billy Davenport. Mr. Wayland was transferred to the claimant's third shift in January 2004 and the claimant immediately began having problems with Mr. Wayland. Mr. Wayland was unfamiliar with the claimant's duties but would tell the claimant what to do and often what Mr. Wayland told the claimant to do was improper and would risk the safety of the plant and others. The claimant would attempt to explain to Mr. Wayland why he could not do what Mr. Wayland was instructing him to do but Mr. Wayland would force the claimant to do it. Mr. Wayland also yelled at the claimant frequently although the claimant did not yell back at Mr. Wayland. The relationship deteriorated because Mr. Wayland held the claimant's questions against him. The claimant expressed concerns to his immediate supervisor, Mr. Davenport, on several occasions including in January 2004 as noted at Claimant's Exhibit A. At that time the claimant indicated that he wanted to transfer to the first shift because of his difficulties with Mr. Wayland but his transfer was denied even though the claimant had seniority. The claimant had also attempted to "bid out" of his job because he had failed a respiratory test because of his work but the employer did not move or transfer the claimant because of his experience. When the claimant would express his concerns to Mr. Davenport, Mr. Davenport would inform the claimant that there was nothing that he could do about it. The claimant did not consult anyone else about his difficulties because the employer made it clear to employees that they needed to consult their direct supervisor.

On February 7, 2004, the claimant left work early at 2:30 a.m. rather than complete his shift at 6:30 a.m. The claimant then returned and talked to his supervisor, Mr. Davenport, on February 11, 2004. The claimant informed Mr. Davenport that he had left his job on February 7, 2004. Mr. Davenport asked the claimant if he was sure he wanted to quit and the claimant said no but the situation with Mr. Wayland needed to be taken care of. Mr. Davenport said that nothing could be done and the claimant then indicated that he could not work under those conditions. Pursuant to his claim for unemployment insurance benefits filed effective

March 7, 2004, the claimant has received no unemployment insurance benefits. However, Iowa Workforce Development records indicate that the claimant is overpaid unemployment insurance benefits in the amount of $306.00 from 1997.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.

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(2), (3), (4) 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:
>
> (2) The claimant left due to unsafe working conditions.
>
> (3) The claimant left due to unlawful working conditions.
>
> (4) The claimant left due to intolerable or detrimental working conditions.

The claimant concedes that he left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. Although it is a close question, the administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant credibly testified that he had worked for the employer since July 1990 as a roundsman. Beginning in January 2004 a new general supervisor, Ronald Wayland, was transferred to the third shift on which the claimant worked. The claimant began having troubles with Mr. Wayland even though Mr. Wayland was not the claimant's direct supervisor. The claimant credibly testified that Mr. Wayland would instruct the claimant to do certain things that should not be done and the claimant was aware of it. Mr. Wayland was unfamiliar with the claimant duties. The claimant would attempt to explain this to Mr. Wayland but Mr. Wayland would tell the claimant to do it anyway. Mr. Wayland would yell at the claimant. Finally, the matters came to a head on February 7, 2004 as set out in the findings of fact when a boiler was down and the claimant had shut off the water wells but Mr. Wayland indicated to the claimant that he did not have a problem but refused to help the claimant fix the boiler or look at the boiler. When the claimant went out to shut off the wells Mr. Wayland called him on the radio and was yelling at him and causing additional problems and the claimant then left before his shift was over. The claimant then came back to the employer on February 11, 2004 and spoke with his direct supervisor, Billy Davenport. Since Mr. Davenport could do nothing for the claimant the claimant confirmed his quit. The employer did not participate in the hearing to provide any testimony to the contrary.

Although it is a close question, based upon the evidence in the record, the administrative law judge concludes that because of the relationship between the claimant and Mr. Wayland, the claimant's working conditions were intolerable and detrimental and perhaps unsafe. The administrative law judge specifically notes that the claimant had worked for the employer since 1990 as a roundsman and knew his job well and apparently had no problems. Mr. Wayland was transferred to the third shift in January 2004 when the claimant immediately began having problems. The claimant expressed concerns to his direct supervisor, Billy Davenport, on several occasions but Mr. Davenport could offer the claimant no assistance. The claimant even went so far as to request a transfer to a different shift in January 2004 as shown at Claimant's Exhibit A and had a witness to this discussion. The claimant then indicated that he would have to quit. The claimant also credibly testified that he tried to bid out of his position because he had failed the respiratory test but because of his experience the employer did not move or transfer the claimant.

Accordingly, although it is a close question, for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily with good cause attributable to the employer, and, as a consequence, he is not disqualified to receive unemployment insurance benefits. The administrative law judge concludes that there is more here than a simple personality conflict between the claimant and a supervisor for which a quit would not be good cause attributable to the employer. See 871 IAC 24.25(22). The relationship between the claimant and Mr. Wayland affected the claimant's working conditions and the entire plant. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

DECISION:

The representative's decision of March 25, 2004, reference 02, is reversed. The claimant, William E. Martin, Jr., is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of $306.00 from 1997.

tjc/b