

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PERLA GUTIERREZ
Claimant

APPEAL NO. 08A-UI-02803-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 12/23/07 R: 12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Perla Gutierrez filed an appeal from a representative's decision dated March 5, 2008, reference 01, which denied benefits based on her separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on April 7, 2008. Ms. Gutierrez participated personally. The employer participated by Will Sager, Human Resources Manager. Ike Rocha participated as the interpreter.

ISSUE:

The first issue is whether Ms. Gutierrez filed a timely appeal. If the appeal is determined to be timely, the issue then becomes whether she was separated from employment with Tyson for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses 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 Ms. Gutierrez at her address of record on March 5, 2008. She does not read or speak English very well and, therefore, had her niece read the document to her. The decision indicated that an appeal had to be filed by March 15, 2008. Because the due date fell on a Saturday, it would be extended to the following Monday, March 17, 2008. The appeal was filed on March 21, 2008.

Ms. Gutierrez was employed by Tyson from July 25, 2006 until August 7, 2007. She worked full time in production. She voluntarily quit the employment to relocate to Texas. She also indicated to the employer that she might be attending school. Continued work would have been available if she had not quit.

REASONING AND CONCLUSIONS OF LAW:

The law requires that an appeal from a representative's decision be filed within ten days of when the decision was mailed. See Iowa Code section 96.6(2). The administrative law judge

believes Ms. Gutierrez' language barrier prevented her from fully appreciating the fact that there was a deadline by which she had to file her appeal. For this reason, the appeal filed on March 21, 2008 shall be deemed timely filed.

It is undisputed that Ms. Gutierrez voluntarily quit her 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). The term "good cause attributable to the employer" generally refers to some matter over which the employer has control. In the case at hand, Ms. Gutierrez quit to relocate to Texas. The employer had no control over this decision. Where an individual quits employment to move to a different locality, the separation is presumed to be without good cause attributable to the employer. 871 IAC 24.25(2).

Because Ms. Gutierrez' separation was not for cause attributable to Tyson, she is not entitled to job insurance benefits. The fact that she notified the employer that she was quitting does not change the fact that the separation was not attributable to the employer.

DECISION:

The representative's decision dated March 5, 2008, reference 01, is hereby affirmed. Ms. Gutierrez voluntarily quit her employment with Tyson for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw