

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH A POWELL**

Claimant

**APPEAL NO: 14A-UI-12892-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 11/16/14**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Deborah A. Powell (claimant) appealed a representative's December 5, 2014 (reference 01) decision 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 January 7, 2015. This appeal was consolidated for hearing with related Appeal No. 14A-UI-12663-DT. The claimant participated in the hearing. Kristi Fox appeared on the employer's behalf. 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 July 23, 2012. She worked full time as a production worker on the first shift at the employer's Waterloo, Iowa pork processing facility. Her last day of work was November 6, 2014. She then went on a leave of absence for medical reasons as of November 7; to return November 14. She then called in an absence on November 14. She was then hospitalized on November 17 and November 18. On November 19 she did not return to work or contact the employer, or did she do so the remainder of the week or thereafter. She established a claim for unemployment insurance benefits effective November 16, 2014. She assumed that she had been or would be discharged by the employer for her attendance if she returned to work. In fact, as of about November 22 she moved back to a home in Burlington, Iowa.

Although the claimant had accumulated significant attendance points as of November 6; the employer had not made any decision regarding whether the claimant would be discharged or not, or whether her absence beginning November 7 would be considered excused. The employer in fact was allowing her through November 28 to return to work. When the claimant did not return to work or contact the employer by November 28, as of about December 1 the employer considered the claimant to have voluntarily quit by job abandonment.

#### **REASONING AND CONCLUSIONS OF LAW:**

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. Rule 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that his separation was not “voluntary” as he had not desired to end the employment; he argues that since the employer had emphasized that an employee could be discharged for being a no-call, no-show that the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; Rule 871 IAC 24.26(21). Rule 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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee believes that she is going to be or has been discharged, but where the employer has not told the claimant that she is discharged. Rule 871 IAC 24.25(33).

The claimant ceased reporting for work without being advised that this employment had ended, and the employer had made no decision to discharge the claimant; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

#### **DECISION:**

The representative's December 5, 2014 (reference 01) decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 16, 2014 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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