

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAZMIN VICENTE
Claimant

APPEAL NO. 16A-UI-12464-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 10/16/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jazmin Vicente filed a timely appeal from the November 10, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that the claimant had voluntarily quit on October 13, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 8, 2016. Ms. Vicente participated initially, but prematurely terminated her participation in the hearing as the administrative law judge was taking her testimony. Kristi Fox represented the employer. Exhibit A was received into evidence.

ISSUE:

Whether Mr. Vicente separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jazmin Vicente was employed by Tyson Fresh Meats, Inc., as a full-time pork production line worker. Ms. Vicente began the employment in 2014. Ms. Vicente's work hours were 6:00 a.m. to 2:30 p.m., Monday through Friday, with occasional Saturday overtime. Ms. Vicente's immediate supervisor for the last year of the employment was Solomon Rubio. Ms. Vicente last performed work for the employer on September 16, 2016. Ms. Vicente was then on an approved period of vacation for the work week of September 19-23, the work week of September 26-30, and Monday, October 3, 2016. Ms. Vicente was scheduled to return to work on October 4, 2016. Ms. Vicente did not return to work on October 4, 2016. Ms. Vicente had traveled to Mexico during her period of approved vacation. Ms. Vicente attempted to return to the employment on Monday, October 17, 2016. By that time, Ms. Vicente had been absent from scheduled shifts without notifying the employer on October 4-7 and October 10-14, 2016. If Ms. Vicente needed to be absent from work, the employer's attendance policy required that Ms. Vicente call a designated absence reporting number at least 30 mins prior to her shift. If Ms. Vicente was going to be absent for multiple days, the policy required that she provide notice each day. The policy also stated that five consecutive days of absence without notice to the employer was subject an employee to termination of the employment. The policy was reviewed with

Ms. Vicente as part of her orientation to the employment and Ms. Vicente was aware of the policy. Kristi Fox, Human Resources Clerk, mans the call in line at the start of the work day, reviews messages left at the designated call in number, and documents the calls. Neither Ms. Vicente nor anyone else notified the employer of Ms. Vicente's need to be absent during the period of October 4 and 14, 2016.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Ms. Vicente's participation in the appeal hearing was problematic. Ms. Vicente prematurely terminated her participation in the hearing while the administrative law judge was taking her testimony. The administrative law judge immediately made two attempts to reconnect with Ms. Vicente to the hearing, but the calls were routed to voicemail. The administrative law judge left a message on both attempts, but did not hear back from Ms. Vicente. The context of the premature termination of participation in the hearing strongly suggests that Ms. Vicente intentionally terminated her participation in the hearing. Prior to terminating her participation in the hearing, Ms. Vicente had demonstrated a pattern of internally contradictory and implausible testimony that suggested an ongoing fabrication. Shortly before Ms. Vicente terminated her participation in the hearing, she asserted that a friend had reported her absences to the employer. Ms. Vicente terminated her participation in the hearing immediately following the administrative law judge's question regarding the identity of the friend.

The weight of the evidence establishes that Ms. Vicente voluntarily quit the employment by being absent for nine shifts between October 4 and 14, 2016 without notice to the employer.

The voluntary quit was without good cause attributable to the employer. Accordingly, Ms. Vicente is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Vicente must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The November 10, 2016, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs