

**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**

**EUGENE MITCHELL
512 COURTLAND ST
WATERLOO IA 50703-4102**

**TYSON FRESH MEATS INC
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-05031-DT
OC: 04/09/06 R: 03
Claimant: Appellant (1)**

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-d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

Eugene Mitchell (claimant) appealed a representative's May 4, 2006 decision (reference 01) that concluded he 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 May 25, 2006. The claimant participated in the hearing. Randy Schultz 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.

FINDINGS OF FACT:

The claimant started working for the employer on August 9, 2005. He worked full time as a no-jobber on the cut floor of the employer's Waterloo, Iowa, pork processing facility. His last day of work was December 14, 2005.

On December 14, the claimant suffered a work-related cut to his right thumb. The employer's staff nurse initially bandaged the cut and indicated he could return to work, but when the cut continued to bleed, the claimant went to a local hospital and received stitches. The emergency room doctor indicated that he was not to use his right hand at that time, and a copy of the doctor's report was faxed to the employer. On December 15 and December 16 the claimant called in absences to the employer due to continued swelling in his hand.

On December 19 the claimant did not call in; late in the day he received a forwarded message from the employer's nurse that she wanted to see him with regard to his injury and the information from the doctor. The claimant determined that it was too late that day to recontact the nurse; however, he also did not seek to recontact the nurse at any time thereafter. The claimant ceased calling in to the employer and did not seek to return to work as he was afraid of further injury and did not wish to return to his prior job due to his injury. He subsequently turned in his identification and received his final paycheck.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment.

Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant has not presented competent evidence showing adequate health reasons to justify his quitting. Further, before quitting he did not inform the employer that he intended to quit unless the problem was corrected or reasonably accommodated, such as by transferring him to another job. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's May 4, 2006 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of December 20, 2005, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

ld/kkf