

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**HARUN Y MALGA**  
Claimant

**APPEAL NO: 18R-UI-12351-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 10/28/18**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1)(d) – Voluntary Quit

**STATEMENT OF THE CASE:**

This matter was before the administrative law judge based on an Employment Appeal Board remand in Appeal Number 18A-UI-11430-JTT. Claimant Harun Malga filed a timely appeal from the November 14, 2018, reference 01, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Malga voluntarily quit on June 13, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 14, 2019. Mr. Malga participated. Jeaneth Ibarra represented the employer.

**ISSUE:**

Whether Mr. Malga voluntarily quit the employment for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Harun Malga was employed by Tyson Fresh Meats, Inc. as a full-time production worker from 2016 until June 13, 2018, when he voluntarily quit. Mr. Malga last performed work for the employer on May 3, 2018. At that time, Mr. Malga commenced an approved medical leave of absence based on a back pain issue unrelated to his employment at Tyson Fresh Meats. Mr. Malga's leave of absence was supported by medical documentation.

At the time Mr. Malga commenced the approved leave of absence, his anticipated return-to-work date was June 3, 2018. On June 3, 2018, Mr. Malga asked the employer to change his employment status from full-time to part-time. The employer acquiesced in the request to go part-time, but Mr. Malga was still dealing with back pain issues and decided not to return to the employment. On June 13, 2018, Mr. Malga notified Jeaneth Ibarra, Human Resources Manager, that he was resigning from the employment due to personal health issues. Mr. Malga's decision not to return to the employment was not based on advice from a licensed and practicing physician. The employer continued to have work available for Mr. Malga at the time of the separation.

After Mr. Malga notified the employer on June 13, 2018 that he was resigning from the employment, he consulted with a doctor and received spinal injections that eventually decreased his back pain. Mr. Malga did not return to Tyson Fresh Meats to request to return to the employment. The employer has a policy that prohibits production workers who have worked for the employer during three distinct periods from returning for a fourth period of production work. That policy does not apply to work the employer deems "management support" work, such as security guard work. During his employment with Tyson Fresh Meats, Mr. Malga, a native Mabaan speaker, sometimes performed management support work in the form of interpreting.

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

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

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.

The weight of the evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. Mr. Malga quit the employment due to a medical condition that was unrelated to the employment. Mr. Malga's decision to quit the employment was not based on advice from a licensed and practicing physician. Though Mr. Malga had compelling personal reasons for leaving the employment, the administrative law judge must conclude under the applicable law that Mr. Malga's quit was without good cause attributable to the employer. Accordingly, Mr. Malga is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Malga must meet all other eligibility requirements. The employer's account shall not be charged.

**DECISION:**

The November 14, 2018, reference 01, decision is affirmed. The claimant voluntarily quit the employment on June 13, 2018 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs