

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZEHIRA DELIC
Claimant

APPEAL NO. 12A-UI-14426-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 04/01/12
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Zehira Delic filed a timely appeal from the November 29, 2012, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on January 10, 2013. Ms. Delic participated. Dzemal Grcic represented the employer. Bosnian-English interpreter Adra Sikiric assisted with the hearing.

ISSUE:

Whether Ms. Delic 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: Zehira Delic was employed by Tyson Fresh Meats, Inc., as a full-time production worker. Ms. Delic started the employment in 2008. Ms. Delic had a history of back issues and in October 2011 reinjured her back while performing her production duties. In October 2011, Ms. Delic commenced an approved medical leave of absence based on the back issue. Ms. Delic received some evaluation and/or treatment from a doctor selected by the employer, but then elected to receive further evaluation and treatment through a doctor of her choice. Ms. Delic's doctor had recommended that she undergo surgery on her back, but Ms. Delic declined to do so. Ms. Delic underwent physical and/or occupational therapy and her condition improved. At Ms. Delic's request, Ms. Delic's doctor released her to return to work without restrictions effective Monday, September 24, 2012. Ms. Delic returned to work on September 24, 2012 and performed work for just that one day. Though Ms. Delic returned to her previous production position, the employer had made some minor changes in the production process during the year or so Ms. Delic had been away from workplace. Ms. Delic called in an absence the next day. Ms. Delic then commenced a new approved leave of absence.

Ms. Delic's doctor released Ms. Delic to return to work without restrictions on October 3, 2012. Despite that, Ms. Delic used the employer's automated absence reporting line to call in absences due to illness on October 3 and 4. Ms. Delic was then excused in advance for an absence for personal business on October 5. On Monday, October 8, Ms. Delic called in an

absence due to illness. At that point, Jim Hook, Human Resources Manager, sent Ms. Delic a letter. The letter indicated that Ms. Delic had been approved for an additional leave of absence with a return-to-work date of October 3, 2012. The letter indicated that Ms. Delic would have to provide additional medical documentation to support her need for additional time away from the employment beyond October 3, 2012. The letter directed Ms. Delic to contact Mr. Hook by October 11, with any questions.

On October 10 and 11, Ms. Delic was excused in advance for another absence due to personal business.

On October 11, Ms. Delic contacted Mr. Hook to ask why her health insurance had been discontinued. Mr. Hook told Ms. Delic that her leave of absence would need to be extended by her doctor to continue her insurance eligibility. Ms. Delic advised that her doctor had not extended the leave of absence. Mr. Hook told Ms. Delic that unless she provided documentation to support her need to be gone from work on or after October 3 that he would have no choice but to terminate her employment *once she reached the maximum allowable attendance points*. Mr. Hook did not tell Ms. Delic that her employment was ended at that point, only that the employment would end at some point in the future if she failed to report for work and failed to provide medical documentation to support her need to be away from work. Ms. Delic continued to call in absences due to illness through October 19, 2012. Thereafter, Ms. Delic did not call in any absences, did not return to work, and did not make further contact with the employer. The employer waited until November 12, 2012 to call the employment done. Ms. Delic never provided the employer with any documentation to support her need to be away from work on or after October 3, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

Workforce Development rule 817 IAC 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 indicates that Ms. Delic voluntarily quit by failing to report for work after October 3, 2012 and by failing to provide any medical documentation to the employer to support her need to be away from work beyond October 3, 2012. Though Ms. Delic may well have been dealing with issues related to her back, Ms. Delic's decision to separate from the employment was not based on the advice of a physician. Nor is there sufficient evidence to establish that it was necessary for Ms. Delic to leave the employment to avoid serious harm to her health. The weight of the evidence establishes a voluntary quit for personal reasons and not for good cause attributable to the employer. Accordingly, Ms. Delic is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Delic.

DECISION:

The Agency representative's November 29, 2012, reference 03, 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, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs