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

JOHN W DAT
Claimant

APPEAL NO: 12A-UI-00101-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSI INDUSTRIES / OAKLAND FOODS
Employer

**OC: 12/04/11
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

John W. Dat (claimant) appealed a representative's December 28, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with OSI Industries / Oakland Foods (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 1, 2012. The claimant participated in the hearing. Ann Vorthmann appeared on the employer's behalf. Joseph Malual served as interpreter. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on October 26, 2009. He worked full time as a production worker on the second shift in the employer's beef steak department. His last day of work was May 20, 2011. On May 16 he verbally advised his supervisor that after May 20 he would be going to Africa to spend time with his family. His supervisor advised him that the employer could only hold his position for no more than two months, but that he would be eligible for rehire if and when he returned.

The claimant spent about six months in Africa. The first couple of months he spent visiting his mother in a hospital. He then spent several months arranging to move family members from one country to another where they would be safer. He returned to Iowa on or about November 29. On November 30 he contacted the employer to seek reemployment, but at that time the employer did not have any positions available to him. As a result, the claimant established a claim for unemployment insurance benefits effective December 4, 2011.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause attributable to the employer.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving due to family responsibilities or serious family needs are good personal reasons for leaving, but are not attributable to the employer. 871 IAC 24.25(23). The employer is not required to hold a position open for the claimant or to find a position for him upon his return from caring for such needs. The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's December 28, 2011 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of May 20, 2011, 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs