

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIS, DERICK, D
Claimant

APPEAL NO. 13A-UI-02333-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/22/12
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Derek Willis filed a timely appeal from the February 21, 2013, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on March 26, 2013. Mr. Willis participated. Kris Rossitter, Employment Manager, represented the employer.

ISSUE:

Whether Mr. Willis separated from the employment for a reason that disqualifies him for unemployment insurance benefits. The administrative law judge concludes that Mr. Willis voluntarily quit the employment without good cause attributable to the employer due to a loss of transportation to and from work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Derek Willis was employed by Tyson Fresh Meats as a full-time production laborer from 2008 and last performed work for the employer on January 4, 2013. Mr. Willis' work hours were 3:00 p.m. to 11:45 p.m., Monday through Friday. Mr. Willis' immediate supervisor was Production Supervisor Noble Cozine. After January 4, 2013, Mr. Willis did not again report for work because he had lost his transportation to and from the workplace. Mr. Willis lived in Burlington. The workplace was outside of Columbus Junction. The commute was 45 minutes each way. As of January 5, 2013, Mr. Willis' car was out of service. Mr. Willis lacked the funds necessary to repair the car. Mr. Willis called in absences due to a lack of transportation on January 7, 8, 9, and 10, 2013.

On January 11, Mr. Willis enlisted a friend or neighbor to give him a ride to the Tyson plant, where Mr. Willis spoke to Julian Fernandez, General Foreman. Mr. Willis told Mr. Fernandez about his predicament and asked if there is any way Mr. Fernandez could assist him with keeping his job. Mr. Fernandez told Mr. Willis where he was on the employer's attendance point system. Mr. Fernandez indicated that Mr. Willis was about to have some old attendance points drop off and that that would help with the attendance point issue. Mr. Fernandez told Mr. Willis that he would like to get him back to work that evening. Mr. Fernandez told Mr. Willis that he would speak to Mr. Cozine and that they would try to figure out whether there was someone that Mr. Willis might be able to carpool with from Burlington until he resolved his transportation issue.

After speaking to Mr. Fernandez, Mr. Willis went back home to Burlington. Mr. Willis telephoned Mr. Cozine a short while later. Mr. Fernandez had not yet spoken to Mr. Cozine. Mr. Willis jumped to the conclusion that Mr. Fernandez had lied to him about his intention to take some steps to try to help Mr. Willis with his transportation issue.

The employer had tried unsuccessfully to locate someone that Mr. Willis could carpool with. Mr. Fernandez had attempted unsuccessfully to contact Mr. Willis with that information. After Mr. Willis was gone from work for additional shifts on January 14, 15, 16, 17 and 18, on January 21, 2013 employer deemed the employment terminated as a voluntary job abandonment.

Up until about three years before Mr. Willis' employment came to an end, the employer had chartered a bus from the Burlington area to the production facility to assist employees such as Mr. Willis in getting to and from work. The employer discontinued that service due to a lack of employee participation. For the last three years of the employment, Mr. Willis had provided his own transportation to and from the workplace. During the last three years of the employment, the employer had not exercised any responsibility for assisting Mr. Willis with getting to and from the workplace.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 24.25(1) 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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

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 employer did not discharge Mr. Willis from the employment. The only reason the employment ended was because Mr. Willis lost his means of transportation to and from the

workplace. Though the employer had assisted employees with getting from the Burlington area to the production plant until three years prior to Mr. Willis' separation of employment, the employer was under no obligation three years after discontinuing that arrangement to provide transportation to Mr. Willis so that he can get back and forth to work. The employer continued to have work for Mr. Willis, provided he could find a way to get back and forth to work. Under the law, Mr. Willis' separation from the employment due to his loss of transportation is a voluntary quit without good cause attributable to the employer. Accordingly, Mr. Willis is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The agency representatives February 21, 2013, reference 04, decision is affirmed. The claimant voluntarily quit the employment 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 ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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