

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HANOLN H EHSA
Claimant

APPEAL NO. 09A-UI-03112-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/25/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated February 23, 2009, reference 01, which denied benefits based upon her separation from Tyson Fresh Meats Inc. After due notice, a hearing was scheduled for and held on March 24, 2009. The claimant participated personally. The employer participated by Willis Sager, Human Resource Manager.

ISSUE:

At issue in this matter is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed by Tyson Fresh Meats from April 8, 2008 until January 7, 2009. She voluntarily quit her employment by failing to report for scheduled work or providing notification for three consecutive workdays. Ms. Ehsa was a full-time production worker and was paid by the hour. The claimant was separated from her employment after she failed to report for scheduled work and did not provide required notification to the employer on January 5, 6 and 7, 2009. The claimant was aware that failing to report and failing to provide notification for three days would result in job abandonment. The claimant failed to report because she felt that she would be discharged for excessive absenteeism as she had been absent on numerous occasions in the past and had been warned.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant quit employment with good cause attributable to the employer. It does not.

The evidence in the record establishes that Ms. Ehsa discontinued reporting for scheduled work and did not report or provide notification to the employer on January 5, 6 or 7, 2009. The claimant was aware that under company policy failure to report or provide notification for three

consecutive workdays would be considered to be job abandonment. The claimant did not call or report because she felt that she would be terminated for previous excessive absenteeism.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

For the reasons stated herein the administrative law judge concludes that the claimant voluntarily quit employment in anticipation of being discharged for excessive absenteeism. Benefits are withheld.

DECISION:

The representative's decision dated February 23, 2009, reference 01, is affirmed. The claimant voluntarily quit employment for reasons not attributable to the employer. The claimant is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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