

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB T WHYMARK
Claimant

APPEAL NO. 11A-UI-11055-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/10/11

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Jacob T. Whymark (claimant) appealed a representative's August 16, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 14, 2011. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in early September 2010. He worked full-time as a production worker on the second shift in the employer's Waterloo, Iowa, pork processing facility. His last day of work was July 1, 2011.

The claimant's wife had left the claimant and their two young children in the fall of 2010 and had moved to Philadelphia, Pennsylvania. This caused the claimant to have difficulties in obtaining childcare for his children and to occasionally miss work as a result of dealing with his children and addressing issues in his marriage. The employer allowed the claimant to switch from first shift to second shift to seek to assist him in dealing with his situation. However, as of July 1 the claimant had about 8.5 attendance points under the employer's ten point attendance policy.

As there still were childcare problems working on the second shift, an agreement was made between the claimant and his wife that he could bring the children to Pennsylvania. On July 1 the claimant informed his supervisor he needed to have some time to drive himself and his children out to Pennsylvania to drop off the children and to attempt to address the issues in the marriage. The supervisor agreed, but the claimant was to return to work by his shift on the afternoon of July 13.

The claimant did drive out to Pennsylvania and did deliver his children to his wife, but then spent nearly a week there attempting to work things out with his wife. He did not leave to return to Iowa until about July 11. He then ran into car problems as he was going through Illinois. He did not have money to pay for repairs, so he had to wait for an acquaintance to make payment for him before his car could be repaired. He did not return to Iowa until about July 13, and did not report for work that day. He then called in to work on about July 14 and July 15 and reported that he was too exhausted from the drive back from Pennsylvania to come in and work. When he sought to return to work on July 18, his supervisor advised him he no longer had a job, that he was considered to have abandoned his job when he did not return to work on July 13 as agreed.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits; and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the employer and claimant had arranged for the claimant to have a leave of absence to deal with his family situation, but that leave of absence was to end as of July 12. The claimant failed to return immediately at the end of the leave of absence; the employer did not agree to extend the leave. The claimant is therefore deemed to have voluntarily quit the employment. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. While the claimant's reasons might have been good personal reasons related to serious family issues, these are not good reasons for failing to return to the employment at the specified time. 871 IAC 24.25(23). Transportation issues, particularly those that are at least somewhat foreseeable as the case here, are also not good reasons for failing to return attributable to the employer. 871 IAC 24.25(1). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's August 16, 2011 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 13, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw