

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-01023-LT
OC 01-04-04 R 12
Claimant: Appellant (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

TIMOTHY W ANDREWS
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STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

TYSON FRESH MEATS INC
C/O FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the January 29, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 12, 2004. Claimant did participate and was represented by Michael Tulis, Attorney at Law. Employer did participate through Jim Petzholdt and Kelly Hammett. Claimant's Exhibits A, B, C and D were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time janitor through December 2, 2003 when he quit due to personal stress. He was under stress because of his divorce on October 15, 2003 (Claimant's Exhibit A) and was briefly incarcerated until October 20, 2003. (Claimant's Exhibit B) On November 28,

2003, claimant told Kelly Hammett he was going to California and to forward his last check to his parents there. He did not go to California but sought mental health assistance instead (Claimant's Exhibit C) and was treated for bipolar disorder. Claimant was not under the care of a physician during his employment and presented no medical information to employer. Claimant is currently receiving treatment in Nebraska and thinks the mandatory work schedule affected his mental health. He did not contact employer or return to work after November 28, 2003 so employer considered him to have voluntarily left his employment.

Claimant did ask for employer to suggest someone talk to about returning to the church. Employer referred claimant to William Hughes with whom claimant had difficulty contacting. He did not request a medical leave of absence because he was confused and did not request a change in hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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(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.

In medical resignations, the claimant must first give the employer notice of the problem and an opportunity to remedy it in order for the voluntary quit to fall within a qualifying separation. Suluki v. EAB, 503 N.W.2d 401 (Iowa 1993).

Claimant did not obtain medical advice about his stress while employed and did not request a leave of absence to address his medical issues. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

DECISION:

The January 29, 2004, reference 01, decision is modified with no change in effect. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as 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 date of separation referred to in the representative's decision should be December 3, 2003, not 2004.

dml/kjf