

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FRANCES H WALLER**  
Claimant

**APPEAL NO. 12A-UI-11979-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON PREPARED FOODS INC**  
Employer

**OC: 09/25/11**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Benefits Overpayment

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated September 28, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 31, 2012. Claimant participated. The employer participated by Mr. Hal Ederington, Human Resource Manager, and Mr. Tim Thier-Menke, Quality Assurance Manager.

**ISSUE:**

The issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Frances Waller began employment with Tyson Prepared Foods on January 14, 2008. Claimant was most recently assigned to work as a full-time Quality Assurance Worker and was paid by the hour. Claimant was most recently assigned to work 4:00 a.m. until the end of production five days per week.

Ms. Waller left her employment on September 7, 2012 after giving two weeks' advance notice because the employer had moved her to second shift work. Ms. Waller had been laid off by the company while the company re-organized and did remodeling for a different product line. At the time that she was recalled to work on April 16, 2012, the claimant was specifically instructed by the Quality Assurance Manager that she was being recalled to second shift work and would remain on first shift only during a training period. Ms. Waller agreed to terms of her recall and continued to work in her position with the company for approximately five months before leaving her employment.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant left employment with good cause attributable to the employer. It does not.

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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

In this case the evidence establishes the claimant was aware at the time of recall that she was being recalled to work on the second shift and would remain only on days during a training period. Ms. Waller accepted the terms of her recall and continued in employment until the effective date of her change to second shift work. At that time the claimant quit employment.

Based upon the evidence in the record, the administrative law judge concludes that there was not a change in the agreement of hire in that the claimant left employment for personal good cause reasons. Her reasons, however, were not good cause reasons attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits

were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated September 28, 2012 reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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