

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PETER P YIECH
Claimant

APPEAL NO. 10A-UI-02855-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/03/10
Claimant: Appellant (1-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Peter Yiech filed a timely appeal from the February 12, 2010, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on April 5, 2010. Mr. Yiech participated. Mike LeFevre, Human Resources Manager, represented the employer.

ISSUE:

Whether Mr. Yiech separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Peter Yiech was employed by Tyson Fresh Meats, Inc., as a full-time production worker from June 2007 and last performed work for the employer on May 8, 2009. On May 5, 2009, Mr. Yiech submitted a written resignation letter to the employer indicating that May 19, 2009 would be his last day. Mr. Yiech planned to travel to Africa for three months. Mr. Yiech had previously requested a leave of absence so that he could travel to Africa and the employer had denied the request. Mr. Yiech did not return to work after May 8, 2009. Mr. Yiech did not make further contact from the employer until July 9, 2009, when he contacted the employer and said he was ready to return to work. The employer had concluded Mr. Yiech moved up his quit date when Mr. Yiech failed to return to work or make contact with the employer after May 8, 2009.

Mr. Yiech did not end up traveling to Africa. On May 8, 2009, Mr. Yiech suffered a broken ankle that required surgical intervention. On May 11, Mr. Yiech was discharged home to recover from his broken ankle. At the time of the hearing, Mr. Yiech indicated he is still recovering from the broken ankle.

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.

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.

A person will be deemed to have voluntarily quit employment when the person submits a resignation notice and the employer accepts the resignation notice. See 871 IAC 24.25(37).

When a person voluntarily quits employment to take a vacation, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(25).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence indicates that Mr. Yiech submitted his written resignation to the employer on May 5, 2009 and that the employer accepted the resignation. The evidence indicates that Mr. Yiech resigned so that he could take an extended vacation to Africa. The employer reasonably concluded that Mr. Yiech had simply moved up his quit date after Mr. Yiech failed to return to work or make contact with the employer after May 8, 2009. The fact that Mr. Yiech did not follow through with his plans to travel to Africa because of his non-work-related injury does not change the nature of the voluntary quit. Mr. Yiech voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Yiech 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 paid to Mr. Yiech.

The evidence in the record raises the question of whether Mr. Yiech has been able to work and available for work since he established his claim for benefits. This matter will be remanded to the Claims Division for determination of those issues.

DECISION:

The Agency representative's February 12, 2010, reference 03, 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.

This matter is remanded to the Claims Division for determination of whether the claimant has been able to work and available for work since he established his claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs