

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTONIO REYES HERRERA
Claimant

APPEAL NO. 10A-UI-04023-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**Original Claim: 01/17/10
Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Tyson Fresh Meats (employer) appealed a representative's March 2, 2010 decision (reference 01) that concluded Antonio Reyes Herrera (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 30, 2010. The claimant participated personally through Anna Cox, Interpreter. The employer participated by Eloisa Baumgartner, Employment Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on May 20, 2002, as a full-time production employee. The claimant had a medical issue that he believed to be work-related but the employer told him was non-work-related. He last worked on February 25, 2009. The employer placed the claimant on medical leave. On January 11, 2010, the claimant returned to work with a release without restrictions from his physician. The supervisor told the claimant he could no longer work for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left work with good cause attributable to the employer.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to an injury under the advice of his physician. The employer consented to his leaving. The claimant has provided the employer with certification that he has recovered. In addition the claimant has offered his services to the employer. No work was available. The claimant has met the requirements of the statute and, therefore, is eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 2, 2010 decision (reference 01) is affirmed. The claimant voluntarily left work with good cause attributable to the employer. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw