

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELLEY M MCNEESE

Claimant

APPEAL NO. 07A-UI-08217-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

**OC: 07/15/07 R: 03
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Shelley M. McNeese (claimant) appealed a representative's August 23, 2007 decision (reference 03) that concluded she 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 12, 2007. The claimant participated in the hearing. The employer's representative received the hearing notice and responded by calling the Appeals Section on September 11, 2007, indicating that Randy Schultz would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Mr. Schultz was not available and a person at his office indicated that the employer would therefore pass on participating in the hearing; therefore, the employer 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on or about March 1, 2006. She worked full time as production worker on the second shift at the employer's Waterloo, Iowa, meat processing facility. Her last day of work was on or about November 15, 2006.

The claimant had been off work due to illness since that date. On or about November 27, the claimant went to the employer's facility. She had discussed her absences with her supervisor, who had commented that it "did not look good." She was concerned that she was going to be fired due to attendance points, as she had missed over the number days normally allowed under the employer's attendance policy. However, she had not yet turned in her doctor's excuses, under which at least some of her absences could be consolidated so as to only count for a single attendance occurrence. The claimant did not speak directly to anyone in the human

resources department. However, believing that she would probably be fired, the claimant informed the clerk in the human resources department that she would go ahead and quit so that she might be eligible for rehire.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code § 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 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Quitting because of a belief that she might be discharged when in fact the employer had not confirmed to the claimant that in fact she was going to be discharged is not good cause for quitting. 871 IAC 24.25. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's August 23, 2007 decision (reference 03) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 27, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css