

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLEEKIA M DAHN

Claimant

APPEAL NO. 14A-UI-02366-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 02/02/14

Claimant: Respondent (1-R)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 19, 2014, reference 02, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on March 25, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with his attorney, David Newell. Kris Rossiter participated in the hearing on behalf of the employer. Exhibits One through Five were admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production laborer from June 22, 2010, to January 3, 2014. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after five days of absence without notice.

The claimant had suffered an injury to his back at work in 2013. The injury was considered work related by the employer and he was given light-duty work because his regular job aggravated his medical condition. Later, the employer deemed the injury as not work related and put the claimant back to work at his normal job, which aggravated his back problems.

After January 3, 2014, the claimant began calling in absent due to his medical condition. In January 2014, he was advised by the doctor who was treating him that he needed a different job. He notified the employer about his doctor's advice and requested a different job but was informed that no light-duty or other job was available. As a result, the claimant stopped calling in after January 17, 2014, and was considered to have quit after missing work for five days without notice to the employer.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that the claimant intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer's evidence regarding the conversations the claimant had with the human resource director were hearsay statements, and the claimant denied that the statements were true. The claimant's testimony was credible and outweighs the employer's evidence.

The evidence establishes the claimant injured his back at work, the injury was accepted as work-related and the employer provided the claimant light-duty work to accommodate his medical issues. He was put back in his normal job, which aggravated his back condition. Based on his doctor's advice, the claimant asked for an accommodation to allow him to continue to work. The claimant would not accommodate his condition so the claimant quit employment. The claimant has complied with 871 IAC 24.26(6)b and is qualified to received benefits.

The evidence presented in the hearing raises the issue of whether the claimant was able to and available for full-time suitable work. The matter of determining whether the claimant was available for work effective February 2, 2014, and afterward is remanded to the Agency. The claimant is instructed to obtain a medical statement regarding any restrictions he had or has in order to properly determine this issue.

DECISION:

The unemployment insurance decision dated February 19, 2014, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The issue of whether the claimant was and is available for work effective February 2, 2014, and afterward is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs