

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KOLLIE COOPER
Claimant

APPEAL NO: 13A-UI-06574-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/05/13

Claimant: Appellant (4)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Kollie Cooper (claimant) appealed a representative's May 28, 2013 decision (reference 01) that concluded he 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 July 16, 2013. The claimant participated in the hearing. Kris Rossiter appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 January 19, 2010. He worked full time as a first shift production laborer on the cut floor of the employer's Columbus Junction, Iowa pork processing facility. His last day of work was March 15, 2013.

On about February 25, 2013 the employer had approved a vacation request for the claimant; he was to start the vacation on March 18, and was to return from vacation for a shift on April 1. On April 1 the claimant did not return to work; rather, a friend and coworker reported to the employer on that date that the claimant was sick and in the hospital in Africa. When the claimant did not return to work within five days, the employer considered the claimant to have voluntarily quit by job abandonment under the employer's contract provisions.

The claimant returned to Iowa on April 29; on or about May 1 he went to speak to the employer's human resources manager. He gave the manager a doctor's note which indicated that he had been in a hospital from about April 10 through April 27; he reported that he previously had been in another hospital from about March 31 until about April 9, but he did not

provide a doctor's note to document that period. The employer considered rehiring the claimant, but ultimately did not.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence, such as for a vacation or trip, is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits, and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed the employee is considered as having voluntarily quit and therefore is ineligible for benefits. *Id.*

Here, the claimant failed to return at the end of the leave of absence that had been granted for his vacation trip, and he is therefore deemed to have voluntarily quit the employment. He would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

Where a claimant has been compelled to leave employment due to a medical or health issue not caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by his physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35).

Here, the claimant voluntarily quit because he was too sick to return to the employment at the end of the leave of absence for his vacation. When he was released by his doctor as able to return to work; he did seek to return to work with the employer, but his position was no longer available to him. “Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956). Even though the employer had a good business reason for proceeding to fill the claimant's position and not rehire him, the separation is with good cause attributable to the employer and benefits are allowed.

DECISION:

The representative's May 28, 2013 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left his employment, but because it was due to illness on his part, and because he did seek to return to the employment upon his recovery, the quit is with good cause attributable to the employer. Benefits are allowed, if the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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