

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENDALL MILLER
Claimant

APPEAL NO. 08A-UI-07060-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 07/06/08 R: 01
Claimant: Appellant (1)**

871 IAC 24.25(35) - Separation Due to Illness or Injury
871 IAC 24.23(10) - Availability Disqualifications

STATEMENT OF THE CASE:

Kendall Miller (claimant) appealed an unemployment insurance decision dated July 29, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he is on a voluntary leave of absence with Tyson Fresh Meats, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 19, 2008. The claimant participated in the hearing. The employer participated through Will Sager, Human Resources Manager. 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:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

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 as a full-time stock handler on August 21, 2007. He sustained a non-work-related injury on June 25, 2008, resulting in non-work-related medical restrictions that prevent him from completing the essential duties of his position. The claimant has no use of his left arm and the restrictions are expected to continue for three to four months. He requested a leave of absence to preserve his employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code sections 96.5-1. The claimant left his employment on June 25, 2008, due to a non-work-related medical condition.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant is unable to carry out the essential functions of his position with his current non-work-related medical restrictions. He requested a leave of absence to preserve his employment, and this leave of absence is deemed to be a period of voluntary unemployment. The claimant has not been released to return to full work duties. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The unemployment insurance decision dated July 29, 2008, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw