

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MARTIN SALINAS  
2947 IMPALA DR  
BROWNSVILLE TX 78521-4519

TYSON FRESH MEATS INC  
c/o TALX UC SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04887-RT  
OC: 03/26/06 R: 12  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Martin Salinas, filed a timely appeal from an unemployment insurance decision dated May 1, 2006, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on May 25, 2006, with the claimant participating. The claimant was assisted by an interpreter, Susana Jaquez. Will Sager, Human Resources Manager for the employer's complex in Storm Lake, Iowa, where the claimant was employed, participated in the hearing for the employer, Tyson Fresh Meats, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. This appeal was consolidated with appeal number 06A-UI-04888-RT for the purposes of the hearing with the consent of the parties.

Claimant's Exhibit A was admitted into evidence. On May 23, 2006, the administrative law judge received a request from the employer's representative to reschedule the hearing because a witness, Will Sager, would be attending a mandatory company meeting. The administrative law judge called the representative at 9:23 a.m. on May 24, 2006. The administrative law judge denied the request for a continuance because it came just a couple of days before the hearing and because the Appeals Section had already scheduled an interpreter and because the administrative law judge would permit Mr. Sager to participate by cell phone or other phone at the meeting wherever he was at the time for the hearing. The administrative law judge pointed out to the employer that there must be other witnesses that would be available to do the hearing and that the issues were really straightforward. The administrative law judge did inform the employer's representative that if the testimony of Mr. Sager was crucial he could keep the record open and reschedule the hearing to take the testimony of Mr. Sager. Mr. Sager participated in the hearing because his mandatory meeting had been postponed.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full-time production worker cutting ribs and hocks from August 2, 2005, until he voluntarily quit effective February 23, 2006. The claimant had also been previously employed by the employer. On February 23, 2006, the claimant went to the employer to pickup his last check and then informed the employer that he was quitting. He was asked to prepare an exit interview and he did so indicating that he was quitting to move to Texas. The claimant quit to move to Texas and to be closer to doctors and relatives who could take care of his wife who was having liver or kidney problems. Apparently the claimant's wife had a kidney or liver transplant and is still seeing a doctor periodically. The claimant has never returned to the employer and offered to go back to work. In the meantime the claimant took a job with Reyes Construction, Inc., as shown at Claimant's Exhibit A, and worked for that employer from February 27, 2006 to March 27, 2006. The claimant did not earn enough from Reyes Construction to requalify to receive unemployment insurance benefits. The claimant earned at most \$2,000.00 from Reyes Construction but the claimant's weekly benefit amount is \$289.00 and he would need to earn ten times that amount or \$2,890.00 in order to requalify to receive unemployment insurance benefits.

The claimant has placed no physical or training restrictions on his ability to work. The claimant has also placed no time or day or location restrictions on his availability for work other than he does have to take off work whenever his wife needs to be taken to the doctor. The claimant is earnestly and actively seeking work.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because, at relevant times, he is, and was, not able, available, and earnestly and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits for these reasons.

Iowa Code section 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.

Iowa Code section 96.5-1-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Code section 96.5-1-e 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:

e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual's family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual's regular employer and offered the individual's services and the individual's regular work or comparable work was not available, provided the individual is otherwise eligible.

The parties agree, and the administrative law judge concludes, that the claimant left his employment voluntarily on February 23, 2006. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6(2). The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The main reason for the claimant's quit, and the reason he gave to the employer, was that he wanted to relocate to Texas. However, leaving work voluntarily to move to a different locality is not good cause attributable to the employer. See 871 IAC 24.25(2). There is also evidence that the claimant needed to take care of his wife. However, leaving work voluntarily for compelling personal reasons when the period of absence exceeds ten working days as it does here or due to family responsibilities or serious family needs is not good cause attributable to the employer. See 871

IAC 24.25(20) and (23). There was evidence that the claimant's wife was seriously ill and that he may have left his employment to take care of his wife. However, there is no evidence that his wife has sufficiently recovered from her illness or that the claimant has returned to the employer and offered to go back to work or that the claimant did not accept any other employment while unemployed. In fact, the claimant accepted and worked for an employer in Texas after moving to Texas. If the claimant left his employment to take a member of his family to a place having a different climate, there is no evidence that he did so on the advice of a licensing and practicing physician nor is there any evidence that the claimant has returned to his employer and offered to go back to work and no regular or comparable work was available. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden to prove that is able, available, and earnestly and actively seeking work under Iowa Code section 96.4(3) or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that at relevant times, he is, and was, able, available, and earnestly and actively seeking work. The claimant testified that he has placed no physical or training restrictions on his ability to work and has placed no time or day or location restrictions on his availability for work other than that when necessary he has to take his wife to the doctor. The administrative law judge believes that this obligation to his wife does not unreasonably impede the claimant's opportunity to obtain employment. While in Texas, as shown at Claimant's Exhibit A, the claimant was able and available for work for an employer and did work for the employer for one month. The claimant testified that he is earnestly and actively seeking work. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and, as a consequence, he is not ineligible to receive unemployment insurance benefits for these reasons. However, as noted above, the administrative law judge concludes that the claimant is disqualified to receive unemployment insurance benefits because he left his employment voluntarily without good cause attributable to the employer.

DECISION:

The representative's decision of May 1, 2006, reference 02, is affirmed. The claimant, Martin Salinas, is not entitled to receive unemployment insurance benefits, until, or unless, he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. The claimant is able, available, and earnestly and actively seeking work.

cs/pjs