

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OSCAR L FLORES

Claimant

APPEAL NO. 09A-UI-18454-JTT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

TYSON FRESH MEATS INC

Employer

OC: 10/18/09

Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Oscar Flores filed a timely appeal from the December 1, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 20, 2010. ON December 17, 2009, Mr. Flores had provided a telephone number for the hearing. The Appeals Section staff did not enter that number into the Agency's computer system to alert the administrative law judge to the fact that the claimant had provided a number for the hearing and the administrative law judge did not contact the claimant for the hearing. John Carreras, Human Resources Manager, represented the employer. On January 21, 2010, Mr. Flores contacted the Appeals Section and provided good cause to reopen the record. On January 21, 2009 at 4:00 p.m., a time agreed to by the parties, the administrative law judge reopened the record and conducted further hearing to assure that Mr. Flores had a full opportunity to participate. Mr. Flores did in fact participate. Mr. Carreras once again represented the employer. The administrative law judge took official notice of Clerk of Court records concerning Mr. Flores' Crawford County incarceration, which records are available to the public at the Iowa Judicial Branch's official website, www.iowacourts.state.ia.us.

ISSUE:

Whether Mr. Flores separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Oscar Flores was employed by Tyson Fresh Meats as any full-time general production worker. Mr. Flores started the employment on May 27, 2009. Mr. Flores last appeared for work on July 21 or 22, 2009. On or about July 22 or 23, Mr. Flores was arrested and incarcerated in the Crawford County Jail on multiple criminal charges, which included at least one felony. Mr. Flores remained in custody, with bond set at \$25,000, until August 21, 2009, when he was released from custody upon a \$25,000.00 unsecured bond. On Friday, July 23, 2009, Mr. Flores had his mother notify the employer of his need to be absent that day. On July 27, 28, 29, and 31, 2009, Mr. Flores was absent from the employment without notifying the employer of his need to be absent. Mr. Flores was aware of the employer's absence notification procedure

and had followed that procedure one or more times prior to his extended incarceration. After the no-call/no-show absences started, the employer did not have further contact with Mr. Flores until November 2009, when Mr. Flores contacted the employer to apply for new employment.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

An unemployment insurance claimant is deemed to have left work voluntarily if such claimant becomes incarcerated. The separation is presumed to be a voluntary quit without good cause attributable to the employer. See 871 IAC 24.25(16).

Pursuant to the administrative rule and the evidence, Mr. Flores voluntarily quit the employment without good cause attributable to the employer effective July 23, 2009, by means of his extended incarceration and the related extended absence from the employment. Mr. Flores is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Flores.

DECISION:

The Agency representatives December 1, 2009, reference 02, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css