

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

SOMKIT KHAOON  
710 E 3<sup>RD</sup> ST  
STORM LAKE IA 50588

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

Appeal Number: 05A-UI-02969-DT  
OC: 02/20/05 R: 01  
Claimant: Appellant (4)

**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-d – Voluntary Leaving/Pregnancy

STATEMENT OF THE CASE:

Somkit Khaoon (claimant) appealed a representative's March 17, 2005 decision (reference 01) that concluded she 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 April 28, 2005. The claimant participated in the hearing. Mark Campbell appeared on the employer's behalf. The record was held open through May 2, 2005 for submission of an employer's exhibit and any objection from the claimant. No objection being made by the claimant, Employer's Exhibit One was admitted to the record as of May 3, 2005. 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.

#### FINDINGS OF FACT:

The claimant started working for the employer on March 16, 2004. She worked full time as a production worker on the cut floor of the employer's Storm Lake, Iowa pork slaughter and processing facility. Her last day of work was October 21, 2004.

The claimant had been missing work frequently due to pregnancy. Her doctor suggested that she stop working due to feeling ill due to her pregnancy. On October 28, 2004 the claimant completed a voluntary quit form and provided it to the employer. The stated reason for quitting was her pregnancy. The employer accepted the resignation. The claimant's baby was born March 8, 2005. As of the date of the hearing, she had not yet attempted to return to employment.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code section 96.5-1-d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The claimant has not returned to the employer and sought to go back to work. She has not demonstrated that she has been released as able to perform her job duties. Benefits are denied

until either such time as the claimant has complied with the provisions of the rule or until she has requalified by earning ten times her weekly benefit amount.

DECISION:

The representative's March 17, 2005 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left her employment due to pregnancy, but has not yet offered to return to work. As of October 28, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, or until she has offered to return to work and no work was available, provided she is otherwise eligible.

ld/pjs