

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

MICHAEL E ELSBERRY  
1100 LIBERTY AVE  
WATERLOO IA 50702

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

Appeal Number: 05A-UI-00208-CT  
OC: 11/28/04 R: 03  
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 Quit

STATEMENT OF THE CASE:

Michael Elsberry filed an appeal from a representative's decision dated December 28, 2004, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on January 25, 2005. Mr. Elsberry participated personally. The employer participated by Randy Schultz, Assistant Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Elsberry began working for Tyson on November 4, 2003

as a full-time production employee. On March 15, 2004, he began a medical leave of absence to undergo surgery for gallstones. After his recovery from the surgery, Mr. Elsberry experienced problems with chronic diarrhea. There were periodic extensions of the leave of absence, the last of which expired on June 2, 2004.

After Mr. Elsberry failed to return to work after June 2, a letter was sent to him by the employer on June 22. He was given until June 28 to submit medical documentation of the continued need to be absent. The certified letter was signed for on June 28, but no further medical information was provided. Another letter was sent on July 28 giving Mr. Elsberry until August 4 to submit medical information regarding his absences after June 2, 2004. The employer still did not receive any further information from Mr. Elsberry. The employer checked with its health services department before sending the letters of June 22 and July 28. Health services did not have any medical documentation for any period after June 2, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Elsberry was separated from employment for any disqualifying reason. The administrative law judge concludes that he voluntarily quit his employment when he failed to return to work following a leave of absence and failed to notify the employer of his circumstances. The employer had extended his original leave of absence on several occasions. Based on this factor, the administrative law judge believes the employer would have continued to allow extensions if Mr. Elsberry had provided the required medical documentation. He received two letters from the employer indicating that additional medical documentation had not been received. If Mr. Elsberry had already given the requested information to health services but it had not been relayed on to the appropriate persons, one would have expected him to make contact to find out why health services had no record of documents he had provided.

Mr. Elsberry may well have been unable to work after June 22, 2004. However, he had an obligation to notify the employer of this fact and to provide the requested documentation of the need to be absent. Because he failed to take those steps necessary to preserve his employment, the administrative law judge concludes that he quit. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any cause attributable to Tyson for Mr. Elsberry's separation. Accordingly, benefits are denied.

#### DECISION:

The representative's decision dated December 28, 2004, reference 01, is hereby affirmed. Mr. Elsberry voluntarily quit his employment with Tyson for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/sc