

**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**

**ILUMINADA NIEVES
407 N 6TH ST
FAIRFIELD IA 52556**

**TYSON FRESH MEATS INC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-08681-DT
OC: 07/11/04 R: 03
Claimant: Respondent (2)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's August 3, 2004 decision (reference 01) that concluded Iluminada Nieves (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 8, 2004. The claimant participated in the hearing. Kristi Travis appeared on the employer's behalf. Susana Jaquez served as interpreter. 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: Did the claimant voluntarily quit and, if so, was it for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on March 18, 2004. Beginning January 16, 2004, she worked full time as a laborer in the cut floor department at the employer's Columbus Junction, Iowa, pork slaughter and processing facility. Her last day of work was March 20, 2004.

On March 9, 2004, the claimant submitted a request to her supervisor for vacation "as soon as possible." The claimant became eligible for a week of vacation as of March 18, 2004, so she was granted off the week of March 22 through March 28. She was expected to report back to work on March 29. The claimant did not return to work and did not further contact the employer. As of May 13, the employer removed her from the employee system for job abandonment.

The claimant indicated that the reason she did not return to work was that for the last week of her employment, her supervisor, who she identified as "Pedro," had been complaining to her that her work was not good, that she was too dumb to learn, and it would be better if she stayed home with her kids. The claimant indicated that she felt very threatened and insulted, but she did not make any report to any other supervisor or human resources. Further, while there was a supervisor during part of the claimant's employment named "Pedro," he was not the claimant's direct supervisor, and his last day of work for the employer was March 8. Therefore, he could not have harassed the claimant during her last week of work or told the claimant not to return to work on the claimant's last day of work as she asserted.

The claimant established a claim for unemployment insurance benefits effective July 11, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,808.00.

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 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.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out by failing to return after her vacation time. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code Section 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). Further, in order for a reason for a quit to be attributable to the employer, an individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996), Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant did not provide this notice and opportunity to the employer. The claimant has not satisfied her burden. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's August 3, 2004 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 29, 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, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,808.00.

ld/tjc