

**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**

**EDDIE E PATE  
1623 NEOLA AVE  
JEFFERSON IA 50129**

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

**Appeal Number: 05A-UI-04506-C  
OC: 04/10/05 R: 01  
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:

Eddie E. Pate filed an appeal from a representative's decision dated April 25, 2005, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held in Des Moines, Iowa, on May 23, 2005. Mr. Pate participated personally and was assisted by John Clark, a non-attorney. Exhibit A was admitted on Mr. Pate's behalf. The employer participated by Tom Barragan, Employment Manager, and Kevin Jacobs, Maintenance Supervisor.

#### 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. Pate was employed by Tyson from March 8, 2004 until March 21, 2005 as a full-time maintenance person. Tyson tracks employee attendance on a point system. A supervisor provides daily information as to which employees are late or absent. The information is put into the computer by another individual. The computer automatically generates a notice when an employee reaches 3, 6, 9, and 14 points. An individual is subject to discharge when he exceeds 13 attendance points.

On March 21, 2005, Mr. Pate was taken to the office and given a printout that indicated he had 14.5 points. When the meeting began, he was told that he had 3 additional points because he had returned from vacation a day late. This brought his total to 17.5 points. There was an apparent miscommunication as to what date he was to return and, therefore, the 3 points he received for returning late were deleted, bringing his total back down to 14.5. Mr. Pate had also received 3 points for a day when he was on suspension. He should not have been assessed points for that day and the 3 points were deleted. At the conclusion of the meeting, the parties agreed that Mr. Pate had only 11.5 points and, therefore, was not subject to discharge at that time.

Mr. Pate returned to work after the meeting. Approximately one hour later, he gave his two-week's notice and then almost immediately indicated that that day would be his last day. He was upset that the employer had not checked its records before telling him he had 17.5 attendance points and, therefore, quit. There are from 850 to 900 employees subject to the attendance point system at the Tyson facility where Mr. Pate worked. Before an individual is discharged because of his point status, the employer reviews the points with him to make sure the records are accurate. Continued work would have been available if Mr. Pate had not quit.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Pate was separated from employment for any disqualifying reason. 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). Mr. Pate quit his employment because he felt the employer was trying to get rid of him. His conclusion was based on the fact that he was charged with having 17.5 attendance points when he had only 11.5 points. He felt the employer should have investigated the matter before meeting with him. With at least 850 employees on the point system, errors can and will occur. The employer may not know there is an issue to investigate unless it is brought to their attention by the employee. It is for this reason that the employer confirms the attendance points before discharging an individual.

In the case at hand, the employer corrected its records once errors were brought to their attention. Both parties agreed at the end of the March 21 meeting that the 11.5 total was correct. Inasmuch as the employer was willing to correct its records, the fact that Mr. Pate was initially told that he had 17.5 points did not constitute good cause for quitting. The administrative law judge believes the problem was caused by a clerical error and a miscommunication rather than an intent to get rid of Mr. Pate. If the employer's intent was to get rid of Mr. Pate, it seems unlikely they would have conceded a miscommunication regarding the date on which he was to return from vacation. They would have left him at 14.5 points and discharged him for exceeding the allowable points.

After considering all of the evidence, the administrative law judge concludes that Mr. Pate did not have good cause attributable to the employer for quitting. Accordingly, benefits are denied.

DECISION:

The representative's decision dated April 25, 2005, reference 01, is hereby affirmed. Mr. Pate 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