

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILIP A NAGIB
Claimant

APPEAL NO. 09A-UI-05065-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**Original Claim: 02/22/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Philip Nagib filed a timely appeal from the representative's decision dated March 17, 2009, reference 01, which held him not eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on April 28, 2009. The claimant participated personally. The employer participated by Susan Pfeifer, human resource manager.

ISSUE:

At issue is whether the claimant quit employment for reasons attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was employed as a general maintenance worker for Tyson Fresh Meats from October 25, 2004, until October 29, 2009, when he voluntarily left employment to move to a different geographic area. Mr. Nagib was employed full time and was paid by the hour.

Mr. Nagib gave notice to the employer of his intention to leave employment to move to the state of Washington. The claimant was not scheduled to work on October 26, 27, or 28, because of normal shift rotation. Company records show that Mr. Nagib reported for work on October 29 but called in sick on October 30. The claimant was listed as a no-call/no-show for his last scheduled day of work, October 31, 2008.

It is the claimant's position that although he had intended to quit employment effective October 31, 2008, he was discharged prior to the effective date of his leaving. Mr. Nagib maintains that he was told by "another worker" that he had been discharged. The claimant did not confirm his discharge by contacting his supervisor or the company's human resource department. The claimant is considered to have left employment under good terms and had not exceeded the company's attendance point level at the time of his agreed-upon separation from employment on October 31, 2008.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant quit employment with good cause attributable to the employer. It does not.

The evidence in the record establishes that Mr. Nagib had provided advance notice to the employer of his intention to leave employment effective October 31, 2008, to move to a different geographic area. Company records show that the claimant was scheduled to be off work on October 26, 27, and 28, due to normal shift rotation, and worked as expected on October 29, 2008. The claimant called in sick the following day and did not report or notify the employer on October 31, 2008. Although the claimant had called in sick and had failed to call or report, he had not exceeded the permissible number of attendance infractions on his last day of agreed employment.

The administrative law judge is aware that Mr. Nagib maintains that he was told that he had been discharged by another hourly employee. It is noted that the claimant did not contact his supervisor or the company's human resource department to verify his termination. The evidence in the record establishes that Mr. Nagib was familiar with the human resource department and had visited the department for other reasons on a number of occasions. At the time of the claimant's separation due to voluntarily quitting employment, he had not exceeded the permissible number of attendance infractions allowed under company policy and the employer had no reason to discharge Mr. Nagib from employment.

The administrative law judge, considering the evidence in this matter, finds the weight of evidence in support of the employer and concludes that the claimant chose to voluntarily leave employment for reasons that were not attributable to the employer. The claimant chose to relocate to a different geographic area for personal reasons.

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.

DECISION:

The representative's decision dated March 17, 2009, reference 01, is affirmed. The claimant voluntarily quit employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw