

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JEMIE P BOTSHELE
Claimant

APPEAL NO. 18A-UI-06096-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/06/18
Claimant: Appellant (5)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jemie Botshele filed a timely appeal from the May 24, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Botshele was discharged on April 6, 2018 for excessive unexcused absences. After due notice was issued, a hearing was held on June 19, 2018. Mr. Botshele participated. The employer failed to comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. French-English interpreter Hugo Lima of CTS Language Link assisted with the hearing. Exhibit A was received into evidence.

ISSUE:

Whether Mr. Botshele separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jemie Botshele was employed by Tyson Fresh Meats, Inc. as a full-time production line laborer from 2015 and last performed work for the employer in March 2018. Toward the end of 2017, Mr. Botshele's start time changed from 7:15 a.m. to 6:15 a.m. Mr. Botshele's regular work week was Monday through Friday. The employer also scheduled Saturday overtime work as needed. In February 2018, Mr. Botshele commenced experiencing vertigo and back pain. Mr. Botshele was still experiencing these issues when he last performed work for the employer in March 2018. Once Mr. Botshele worked his most recent shift in March 2018, he was then out of contact with the employer for about a month. Mr. Botshele knew that the employer's absence reporting policy required that he contact the employer prior the scheduled start of the shift to give notice of his need to be absent and that the policy required such contact each day of the absence. Mr. Botshele had not requested and the employer had not approved a leave of absence. Mr. Botshele did not provide the employer with medical documentation to support his absence from work. In April, when Mr. Botshele decided he was ready to return to work, he reported to the workplace, but the employer declined to allow him to return to the employment. Instead, the employer confiscated Mr. Botshele's employee ID.

Mr. Botshele is a native French speaker, but has substantial English language skills. Mr. Botshele spoke French and English in the workplace. Mr. Botshele did not ask the employer to provide a French-English interpreter.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

The employer did not participate in the appeal hearing and did not present any evidence. However, the evidence presented through Mr. Botshele's testimony and his sole exhibit indicates a voluntary quit, not a discharge. The evidence indicates that Mr. Botshele ceased appearing for work and ceased contact with the employer in March 2018 and then was out of contact with the employer for a month before he attempted to return to work. Mr. Botshele had not requested a leave of absence and had not been approved for a leave of absence. Mr. Botshele knew that he was required to give daily notice of absences, but failed to do that for a month.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

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.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Mr. Botshela asserts that his month-long absence from the employment was due to a medical condition. Mr. Botshela had not presented any medical documentation to support his month-long absence from the employment or to establish that he needed to go off work at all. The evidence in the record establishes a voluntary quit that was for personal reasons and that was without good cause attributable to the employer. The quit was effective in March 2018. Mr. Botshela is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Botshela must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The May 24, 2018, reference 01, decision is modified as follows. The claimant voluntarily quit the employment in March 2018 without good cause attributable to the employer. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs