

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

OKUOM M AKWAY
5840 E RIVER RD
FRIDLEY MN 55432

TYSON FRESH MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-00244-DWT
OC: 12/11/05 R: 12
Claimant: Respondent (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, 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 Quit

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's January 3, 2006 decision (reference 01) that concluded Okuom M. Akway (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 26, 2006. The claimant participated in hearing. Will Sager, the complex human resource manager, appeared on the employer's behalf. 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 his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 30, 2004. The claimant worked as a full-time production worker.

The claimant wanted to visit his relatives in Africa. Prior to purchasing his airplane ticket, the claimant talked to the human resource department and his supervisor. Initially, the employer indicated the claimant could have a week of vacation. When the claimant explained he needed a month off from work, the human resource department representative indicated this was possible if his supervisor allowed the claimant to be gone a month.

The claimant talked to his supervisor. The claimant understood his supervisor gave him permission to be gone a month. Based on this understanding the claimant bought a non-refundable airplane ticket.

After the claimant asked his supervisor to complete the necessary paperwork for his month-long vacation, the claimant's supervisor then informed the claimant another supervisor would not allow the claimant to be gone a month because the employer did not have enough employees working during the time the claimant wanted off from work. After the claimant told his supervisor he had already purchased his airplane tickets, his supervisor indicated the claimant could either be gone one week or he would have to quit.

Since the claimant had already purchased his tickets, he went to Africa for a month. The claimant's last day of work was November 17, 2005. The claimant understood he could reapply to work for the employer in a few months.

The claimant's supervisor informed the human resource department the claimant quit because he moved to Africa. The claimant did not move to Africa. After visiting family in Africa, the claimant returned to Iowa. When the claimant returned to Iowa, the employer no longer considered the claimant an employee because he had not returned to work after November 17, 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The claimant voluntarily quit his employment when he went to Africa for a month. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant quits with good cause when he quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The facts show the claimant reasonably relied on his supervisor's verbal assurance that he could take a month off from

work. The claimant had no reason to believe his supervisor would change his mind since a supervisor has the discretion to allow an employee to be off work one month. As a result of the reliance on his supervisor's authorization, the claimant purchased non-refundable tickets to Africa. After the claimant bought his airplane tickets, the employer changed the terms of the claimant vacation or time off and denied the claimant a month off from work. The claimant was left in a Catch-22 situation. Since the claimant purchased his tickets only after he received permission to take a month off from work and the employer substantially changed the claimant's time off request to the claimant's detriment, the claimant established good cause for leaving his employment in mid-November. As of December 11, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 3, 2006 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for reasons that qualify him to receive benefits. As of December 11, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf