

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS L DAVIS**  
Claimant

**APPEAL NO: 09A-UI-01221-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 11/23/08 R: 01**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Travis L. Davis (claimant) appealed a representative's January 22, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2009. The claimant participated in the hearing. Will Sager 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:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on September 18, 2007. He worked full time as a production worker on the "B" shift (start time 4:30 p.m.) at the employer's Storm Lake, Iowa pork processing facility. His last day of work was the shift that began at 4:30 p.m. on September 22, 2008. He was arrested at the facility at approximately 6:30 p.m. and incarcerated through on or about November 17, 2008. The employer considered his employment terminated for job abandonment as of September 25, 2008, or alternatively for excessive absenteeism.

The employer has a 14-point attendance policy. Prior to September 22 the claimant had already incurred 13 points, ten for medical-related reasons, and three for other personal reasons. He had been given warnings on March 24 and May 12, 2008.

The employer did rehire the claimant as of December 9, 2008, and the claimant currently remains employed with the employer.

**REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

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. However, an employee is also deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). Benefits are denied.

In the alternative, treated as a discharge, the result is the same. Absenteeism can constitute misconduct where they are excessive and unexcused. 871 IAC 24.32(7). The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had several prior unexcused absences and previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's January 22, 2009 decision (reference 01) is affirmed. The claimant is deemed to have voluntarily left his employment without good cause attributable to the employer. As of September 22, 2008, benefits are withheld until such time as 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.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/pjs