

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDDIE SANTOS

Claimant

APPEAL NO. 12A-UI-03812-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 02/26/12

Claimant: Appellant (1)

Section 96.5(1)(c) – Voluntary Quit to Care for Sick Family Member

STATEMENT OF THE CASE:

Eddie Santos filed a timely appeal from the April 5, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 30, 2012. Mr. Santos participated. Will Sager, complex human resources manager for Store Lake, represented the employer.

ISSUE:

Whether Mr. Santos separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Eddie Santos was employed by Tyson Fresh Meats, Inc., in Storm Lake as a full-time production worker from 2009 until February 16, 2012, when he left the employment to relocate to Puerto Rico to care for his ill mother. Before Mr. Santos separated from the employment, he received a telephone call from his mother. His mother notified him that she had cancer, had to undergo treatment, and needed his help. Mr. Santos notified the employer of his need to relocate to Puerto Rico to assist his mother with her cares. The employer continued to have work available to Mr. Santos at the time he separated from the employment. Mr. Santos' mother continues with her treatment at this time. Since Mr. Santos separated from the employment in February, he has not returned to the employer to offer his services. Since Mr. Santos arrived in Puerto Rico, he has looked for new employment but has not yet accepted new employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

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 871 IAC 24.25.

Mr. Santos' voluntary quit was for compelling personal reasons and not for good cause attributable to the employer. When it comes to quits based on the need to care for an ill family member, Iowa Code section 96.5(1)(c) carves out a narrow exception to the disqualification that ordinarily accompanies a voluntary quit without good cause attributable to the employer. To be eligible for benefits under the exception, a claimant must meet each of the conditions contained in the exception. Mr. Santos has met some, but not all of the requirements to be eligible for benefits under the exception. On the one hand, Mr. Santos left the full-time employment for the necessary and sole purpose of taking care of his mother, who was ill. Mr. Santos has not yet accepted new employment. But there are a number of requirements that have not been met. First, under the exception to disqualification, Mr. Santos is not eligible for benefits during the period of the absence from Tyson. Second, Mr. Santos cannot be eligible for benefits until he has returned to the employer immediately after his mother's recovery, offered his services to the employer, and been told by the employer at that point that there is no work for him. In the meantime, if Mr. Santos accepts other employment during his absence from Tyson, he will no longer be able to assert eligibility under the exception even if he does later return to Tyson to offer his services.

Unless Mr. Santos complies with all of the requirements of Iowa Code section 96.5(1)(c) outlined above, he is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account may only be charged for benefits if and when Mr. Santos complies with the requirements of Iowa Code section 96.5(1)(c). Otherwise, the employer's account will not be charged.

DECISION:

The Agency representative's April 5, 2012, reference 01, decision is affirmed. The claimant voluntarily quit without good cause attributable to the employer. The claimant has not met the eligibility requirements to be eligible for benefits under the family illness exception in Iowa Code section 96.5(1)(c). The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged unless the claimant subsequently fulfills all of the requirements to be eligible for benefits under Iowa Code section 96.5(1)(c).

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw