

**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**

**ROSA E RIVAS
3420 DODGE ST #2
OMAHA NE 68131-3418**

**TYSON FRESH MEATS INC
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-01771-CT
OC: 12/25/05 R: 12
Claimant: Appellant (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:

Rosa Rivas filed an appeal from a representative's decision dated February 7, 2006, reference 01, which denied benefits based on her separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on March 2, 2006. Ms. Rivas participated personally and offered additional testimony from Bogar Canales. The employer participated by Susan Pfeiffer, Human Resources Manager. Ike Rocha participated as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Rivas was employed by Tyson from October 9, 2002 until May 23, 2005 as a full-time production worker in packaging. On May 20, 2005, she was notified that she had accumulated 14.5 attendance points. An individual is subject to discharge when she reaches 14 points. Ms. Rivas was not discharged on May 20 because the employer had not given her timely notice of her point status. She was told on May 20 that she could be discharge on her next occurrence of absence.

Ms. Rivas did not report for work on May 23 because she was ill. She did not call to report the absence. She came to the workplace after the start of her shift and completed and exit interview. She completed the form in Spanish and indicated she was leaving because she was experiencing personal and health problems. She would not have been automatically discharged as a result of the May 23 absence. The employer would have given her an opportunity to see if some of her past absences could be covered by the Family and Medical Leave Act (FMLA) before a discharge decision was made. Continued work would have been available until the employer made a decision concerning her continued employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Rivas was separated from employment for any disqualifying reason. She was never told she had been discharged. She assumed she would be discharged as a result of the May 23 absence. However, the employer had not made any decision as to whether the absence would cause her discharge. Since her prior absences were due, in large part, to her pregnancy, there was the possibility the absences could be covered by FMLA and, therefore, would not have resulted in discharge. Ms. Rivas quit before the employer could make a determination regarding her continued employment. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Rivas cited personal and health reasons as the cause of her decision to quit. Since these were not matters over which the employer had control, they did not constitute good cause attributable to the employer for quitting. For the above reasons, benefits are denied.

DECISION:

The representative's decision dated February 7, 2006, reference 01, is hereby affirmed. Ms. Rivas quit her employment with Tyson for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/tjc