

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA L THOMPSON
Claimant

APPEAL NO. 12A-UI-01942-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 12/18/11
Claimant: Respondent (1)**

Section 96.5-1-d – Work Not Available to Claimant

STATEMENT OF THE CASE:

Tyson Fresh Meats Inc. filed a timely appeal from a representative's decision dated February 14, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that on November 17, 2011 the claimant offered to return to work following an illness or injury but no work was available. After due notice was issued, a telephone hearing was held on March 14, 2012. The claimant participated personally. Participating on behalf of the claimant was her attorney, Mr. Gary Nelson. Participating as a witness for the employer was Ms. Teri Wray, Assistant Human Resource Manager.

ISSUE:

The issue is whether the claimant separated from employment for a disqualifying reason.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Teresa Thompson began employment with Tyson Fresh Meats on September 29, 2008 and was employed as a full-time production worker. Ms. Thompson's last day of work was December 20, 2011 due an on-the-job injury. Ms. Thompson had returned to work with a permanent light-duty limitation on November 17, 2011. The employer had no job assignment for the claimant that fit the light-duty limitation although the claimant had been injured on the job. The claimant was placed in a "job walk" classification that allowed Ms. Thompson to continue working for 30 additional days checking available positions that might be offered by the company for bid. Under the company's process employees are retained on the company's "employment rolls" for a one-year period thereafter and come in once per week to check potential jobs that the employee feels they may be able to perform based upon their medical limitations.

It is the employer's position that the "bid walk" is a form of leave of absence and the claimant should not be eligible to receive unemployment insurance benefits because she has agreed to a leave of absence.

Ms. Thompson was not given the option of accepting or rejecting the company's "bid walk" procedure. Ms. Thompson did not agree to enter a leave of absence and desired to resume her employment after being released by her physician with a light-duty limitation on November 21, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was separated from her employment for a disqualification reason. It does not.

Iowa Code section 96.5-1 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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

The evidence in the record establishes that the claimant's separation from employment was initiated by the employer when the employer was unwilling to place the claimant in a job position that met her permanent light-duty restrictions after the claimant had been released to return to work following a work-related illness or injury. The claimant had returned to work on November 21, 2011 and offered to return to work at that time, however, no work was available to her.

The evidence in the record clearly establishes that the claimant did not voluntarily enter into a leave of absence agreement with Tyson Fresh Meats. The administrative law judge concludes that the claimant was separated by the employer for no disqualifying reason. Unemployment insurance benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated February 14, 2012, reference 01, is affirmed. The claimant was separated from employment for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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