

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN D RAMIREZ CRUZ
Claimant

APPEAL NO. 12A-UI-09985-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07-15-12
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 13, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 12, 2012. The claimant did participate and was assisted by interpreter Anna Pottabaum and represented by Christina Jacobs, Attorney at Law. The employer did participate through Teri Wray, Assistant Human Resources.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker full time beginning April 19, 2010 through February 21, 2012 when he voluntarily quit rather than return to his assigned job. The claimant provided no medical evidence to establish that he was removed from work by any physician for an either work related or non-work-related injury. The claimant asked for a leave of absence from the employer and asked to be moved to a different job. He was granted a limited leave, but never provided to the employer or for the hearing any medical evidence indicating he was not physically capable of performing his assigned job duties. The claimant was specifically told on February 21, that he had to return to his assigned job or if he refused, the employer would consider his leaving a voluntary quit. Prior to refusing to return to work the claimant did not provide the employer with any medical evidence indicating that he had a work related injury or condition that prevented him from performing his job duties. The claimant's mere statement alone that he cannot work does not meet his burden of proving good cause attributable to the employer for leaving.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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.

871 IAC 24.25(27) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant provided no medical evidence either to his employer or at the hearing indicating he had any medical condition that prevented him from returning to work on February 21. The claimant simply wanted the employer to move him to a different job and the employer would not do so. Under such circumstances the claimant is considered to have voluntarily quit his employment by refusing to perform his assigned work. Benefits are denied.

DECISION:

The August 13, 2012 (reference 01) decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css