

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY S WOODFIN
Claimant

APPEAL NO. 09A-UI-01878-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/04/09 R: 12
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated January 26, 2009, reference 01, which held that no disqualification would be imposed regarding Rodney Woodfin's separation from employment. After due notice was issued, a hearing was held by telephone on February 26, 2009. Mr. Woodfin participated personally. The employer participated by Will Sager, Human Resources Manager.

ISSUE:

At issue in this matter is whether Mr. Woodfin was separated from employment for any disqualifying reason.

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: Mr. Woodfin began working for Tyson on April 29, 2008 as a full-time production employee. He voluntarily quit the employment and told his supervisor that he was moving. He completed an exit interview on November 24 in which he indicated he was moving home to work for his brother. The reason for leaving was written by Mr. Woodfin and not the employer.

Mr. Woodfin did have attendance issues while working for Tyson. His last absence before the separation was on November 15. At that time, he had only 12 attendance points. He was last disciplined on November 4 when he had 10 points. An individual is not subject to discharge until he reaches 14 points. Continued work would have been available if Mr. Woodfin had not quit.

Mr. Woodfin filed a claim for job insurance benefits effective January 4, 2009. He has received a total of \$2,560.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The evidence of record satisfies the administrative law judge that Mr. Woodfin voluntarily quit his employment. Although he contended that he had received a letter of discharge, he could not produce a copy of the letter and the employer has no record of a letter of termination being sent to him. He may well have received a notice advising him of the right to continue any benefits he was receiving through Tyson. Most persuasive is the statement written by Mr. Woodfin on the exit interview in which he indicated he was moving home to work for his brother. For the above reasons, the separation is considered a voluntary quit.

An individual who voluntarily leaves 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). Having taken the position that he was discharged, Mr. Woodfin did not offer any reason he would quit the employment. He told his supervisor he was moving and indicated on the exit interview that he was moving home. An individual who leaves employment to move to a different locality is presumed to have quit without good cause attributable to the employer. 871 IAC 24.25(2). Mr. Woodfin has not overcome the presumption that his separation was not for good cause attributable to the employer. Accordingly, benefits are denied.

Mr. Woodfin has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Woodfin will be required to repay benefits already received.

DECISION:

The representative's decision dated January 26, 2009, reference 01, is hereby reversed. Mr. Woodfin quit his employment with Tyson for no good cause attributable to the employer. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Woodfin will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs