

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**NORMA JORDAN**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 14A-UI-12636-KCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/16/14  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 5, 2014, (reference 01) unemployment insurance decision that denied benefits based upon the claimant's voluntarily quitting work on October 14, 2014. The parties were properly notified about the hearing. A telephone hearing was held on January 6, 2015, originating from Des Moines, Iowa. The claimant participated with no additional witnesses. The employer participated through Human Resources staff person Ms. Maria Villalpando.

**ISSUE :**

Was the claimant's separation from employment with 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 full time with the employer as a laborer beginning on September 20, 2012. She was separated from employment on November 21, 2014. She last worked on November 14, 2014.

The employer has a written policy regarding attendance which includes, in part, that an employee is required to call the employer two hours before the start of a shift to report the employee's inability to work at the appointed time and place. The claimant was aware of that policy.

The claimant called the employer's automated system on November 17, 2014 and reported that she was unable to get to work due to problems with her vehicle. The claimant was also scheduled to work on November 18, 19 and 20 of 2014. She did not call the automated system or her direct supervisor Miguel Lopez on any of those days to inform the employer that she remained unable to get to work because of problems with her vehicle.

The claimant had talked to her supervisor before November 18, 2014 about her absences. After that conversation, she thought that she would lose her job if she missed any more work because she was at the maximum number of points employees were permitted to have for

unexcused absences before being terminated. No one, however, informed the claimant that her employment was terminated.

The claimant and employer's representative differ on whether the employer contacted the claimant after she missed work without contact on November 18, 2014. Nonetheless, there is no dispute that the claimant did not contact the employer for the three consecutive days that she was scheduled to work in November 2014 and did not show up at work.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code § 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.

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.

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

The claimant did not call her immediate supervisor or anyone else at the employer's worksite for the three days she was scheduled on November 18, 19 and 20 of 2014. Since claimant did not follow up with management personnel, and her assumption of having been fired was erroneous, the failure to continue reporting to work was an abandonment of the job. Benefits are denied.

**DECISION:**

The December 5, 2014, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to 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 benefit amount, provided she is otherwise eligible.

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Kristin A. Collinson  
Administrative Law Judge

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Decision Dated and Mailed

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