

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELINE WEAH
Claimant

APPEAL NO. 10A-UI-02225-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 12/27/09
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Angeline Weah filed a timely appeal from the January 25, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 30, 2010. Ms. Weah did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Eloise Baumgartner, Employment Manager, represented the employer.

ISSUE:

Whether Ms. Weah separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Angeline Weah was employed by Tyson Fresh Meats, Inc., as a full-time production worker from November 2006 and last performed work for the employer in November 2009. Ms. Weah was on an approved vacation during the period of Monday, April 30 through Friday, December 11, 2009. On December 14, 2009, Ms. Weah commenced an approved leave of absence with a December 21, 2009 expected return date. The employer then documented no-call/no-show absences for December 21, 22, 23, 24, and 28. On January 6, Brian Jackson, Kill Department Supervisor spoke with Ms. Weah. Ms. Weah told Mr. Jackson she was having issues with her children and had decided to stay home with her children rather than return to the employment. The employer documented a separation from the employment effective January 6, 2010.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

- a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
- b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
- c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
- d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When a person fails to return to work at the end of a negotiated leave of absence and becomes unemployed, the person is deemed to have voluntarily quit without good cause attributable to the employer and is not eligible for unemployment insurance benefits. See 871 IAC 24.22(2)(j)(2).

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.

When a person elects to leave employment due to childcare issues, the person is presumed to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(17).

The weight of the evidence in the record establishes that Ms. Weah voluntarily quit the employment without good cause attributable to the employer when she elected to stay home with her children rather than return to the employment at the end of a negotiated leave of absence. Ms. Weah is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Weah.

DECISION:

The Agency representative's January 25, 2010, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant

is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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