

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MARTHA TORRES
25170 – 19TH ST
SAN BERNARDINO CA 92402**

**TYSON FRESH MEATS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-08837-CT
OC: 07/11/04 R: 12
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Martha Torres filed an appeal from a representative's decision dated August 13, 2004, reference 01, which denied benefits based on her separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on September 30, 2004. Ms. Torres participated personally and offered additional testimony from her son, Xavier Pasillas. The employer participated by Kris Travis, Employment Manager. Guadalupe McCarney participated as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Torres was employed by Tyson from June 3 until August 29, 2003 and worked full time in packaging. She did not return to work after August 29 and did not contact the employer regarding her intentions. She had not complained about any matters prior to quitting. Continued work would have been available if she had not quit.

Tyson employees are allowed one 15-minute break in the morning and a 30-minute lunch break. If they work more than eight hours, they also get a 15-minute break in the afternoon. Individuals are allowed to leave the production line to go to the bathroom but have to have permission to do so. Ms. Torres never complained that she was being denied use of the bathroom. Her son worked at Tyson during the same time frame and speaks fluent English.

Ms. Torres believed that there were other employees at Tyson who were not legally authorized to work in the United States. She never addressed her concerns with the employer or with any government agency. The employer is periodically audited by the Immigration and Naturalization Service (INS) but has never been cited for employing unauthorized aliens.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Torres was separated from employment for any disqualifying reason. An individual who voluntarily quits 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). Ms. Torres had the burden of proving that her quit was for good cause attributable to the employer. Iowa Code section 96.6(2). Ms. Torres contended that she quit because she was denied the use of the restroom. However, even if her concern was a legitimate one, she acknowledges that she never complained to the employer about the problem. Therefore, she deprived the employer of the opportunity to address the problem. The administrative law judge appreciates that Ms. Torres is not fluent in English. However, her son is and he worked at Tyson during the same time frame and could have spoken to the employer on his mother's behalf.

The administrative law judge has considered Ms. Torres' complaints about Tyson hiring undocumented aliens for its workforce and finds the contentions to be without merit. If there was a widespread problem of undocumented workers at Tyson, the administrative law judge believes INS would have detected it and taken appropriate action. While the employer may not have been able to recognize forged documents, the administrative law judge is satisfied that INS would have been able to detect forged paperwork.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Torres has failed to satisfy her burden of proving that she had good cause attributable to the employer for quitting. Accordingly, benefits are denied.

DECISION:

The representative's decision dated August 13, 2004, reference 01, is hereby affirmed. Ms. Torres voluntarily quit her employment for no good cause attributable to the 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjf