

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARVIN D YOUNGBLUT
Claimant

APPEAL NO. 09A-UI-00938-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 12/14/08 R: 04
Claimant: Appellant (2)

Section 96.5-1-a – Quit for Other Employment

STATEMENT OF THE CASE:

Marvin D. Youngblut filed a timely appeal from an unemployment insurance decision dated January 15, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held February 6, 2009, with Mr. Youngblut participating and presenting additional testimony by Randy Youngblut. The employer, Tyson Fresh Meats, Inc., did not respond to the hearing notice.

ISSUE:

Did the claimant leave work with Tyson Fresh Meats, Inc., for a disqualifying reason?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Marvin D. Youngblut was employed by Tyson Fresh Meats, Inc. from May 2005 until he resigned on July 8, 2008. Mr. Youngblut resigned, intending to go to work for his third cousin, Randy Youngblut. The commencement of the employment was delayed because of business conditions. Marvin Youngblut finally performed services for Randy Youngblut beginning in November 2008. He worked in a gutter installation business. He filed a claim for benefits effective December 14, 2008, due to a seasonal layoff.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant left work with Tyson Fresh Meats, Inc., for a disqualifying reason. He did not.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

If an individual leaves employment for the sole purpose of accepting other employment, the separation from the first employer (Tyson Fresh Meats, Inc.) is not a disqualifying event. The individual is ineligible for unemployment insurance benefits during the period of time he waits to go to work for the new employer, but benefits are awarded or denied depending upon the circumstances surrounding the end of the second employment. The evidence here establishes that Mr. Youngblut did not file a claim for unemployment insurance benefits until mid-December 2008, after his employment with Randy Youngblut had ended. The question of whether he would have been eligible for unemployment insurance benefits from July to mid-December is moot because he has not requested benefits for that period of time. The administrative law judge concludes that the separation from employment was not a disqualifying event. No benefits shall be charged to the account of Tyson Fresh Meats, Inc., pursuant to the provisions of the statute.

DECISION:

The unemployment insurance decision dated January 15, 2009, reference 01, is reversed. The claimant left work with Tyson Fresh Meats, Inc., in order to accept other employment. He is entitled to receive unemployment insurance benefits effective December 14, 2008, provided he is otherwise eligible. No benefits shall be charged to the account of Tyson Fresh Meats, Inc.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw