

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

OLGA L RODRIGUEZ
1708 – 8TH AVE
COUNCIL BLUFFS IA 51501-6043

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

Appeal Number: 06A-UI-04167-CT
OC: 03/19/06 R: 01
Claimant: Respondent (2)

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
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 April 7, 2006, reference 01, which held that no disqualification would be imposed regarding Olga Rodriguez' separation from employment. After due notice was issued, a hearing was held by telephone on May 18, 2006. Ms. Rodriguez participated personally. The employer participated by Susan Pfeifer, Human Resources Manager. Susan Jaquez participated as the interpreter.

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: Ms. Rodriguez began working for Tyson on June 23, 2003 and last worked on January 6, 2006. She was a full-time production worker. She voluntarily quit because the work caused her shoulder to hurt. She saw the company nurse, who rubbed an ointment into her shoulder and gave her pain pills. Ms. Rodriguez never asked to see a doctor concerning her condition and did not seek treatment with her family doctor. According to the employer's records, she was last seen by the company nurse in October of 2005.

When Ms. Rodriguez advised the employer she was quitting because of shoulder pain, she was encouraged to bid on other available positions in the plant. There were seven positions open for bids during the week Ms. Rodriguez quit. Five of those positions were on the day shift. Jobs that are bid on are awarded based on seniority. Had Ms. Rodriguez bid on an open position, the employer predicted that she could have been awarded one of at least four that she qualified for and for which she was the most senior person. Ms. Rodriguez was aware of the bidding process but declined to bid on available positions. She stated she was tired of working and there was too much stress. Continued work would have been available if she had not quit.

Ms. Rodriguez has received a total of \$1,466.00 in job insurance benefits since filing her claim effective March 19, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Rodriguez was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Rodriguez quit her job with Tyson because the job she was performing caused her shoulder to hurt. However, the employer attempted to transfer her to a different job by having her bid on other positions that were open. Ms. Rodriguez did not avail herself of the opportunity to try work in a different job to see if that would eliminate the problem with her shoulder. She did not give the employer a reasonable opportunity to try to remedy the problem that was causing her to quit.

For the reasons stated herein, the administrative law judge concludes that Ms. Rodriguez did not have good cause attributable to the employer for quitting. Accordingly, benefits are denied. Ms. Rodriguez has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 7, 2006, reference 01, is hereby reversed. Ms. Rodriguez 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. Ms. Rodriguez has been overpaid \$1,466.00 in job insurance benefits.

cfc/pjs