

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

THORSHA M GARY  
1019 W 3<sup>RD</sup> ST  
WATERLOO IA 50701 2617

TYSON FRESH MEATS INC  
C/O TALX UCM SERVICES I NC  
PO BOX 283  
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-02570-DWT  
OC: 02/05/06 R: 03  
Claimant: Appellant (5)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Thorsha Gary (claimant) appealed a representative's February 22, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2006. The claimant participated in the hearing. Randy Schultz appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits or did the employer discharge her for work-connected misconduct?

Is the claimant able to and available for work as of February 5, 2006?

FINDINGS OF FACT:

The claimant started working for the employer on April 26, 2005. The claimant worked full time. The claimant started experiencing medical problems in mid-November 2005. The claimant did not work November 12 through 21, or on November 23, 25, 26, and December 1 because she was either on a medical leave of absence or restricted by her doctor from working. The claimant returned to work in December. The last day she worked was December 12, 2005.

The employer granted the claimant a medical leave of absence from December 13, 2005, through January 20, 2006. The employer's human resource department did not extend the claimant's medical leave beyond January 20 because the human resource department did not receive any documentation from the claimant indicating there was a medical reason to extend her medical leave.

During the week of February 5, 2006, the claimant established a claim for unemployment insurance benefits. On February 13, the employer sent the claimant a letter informing her that the employer's health department had not received any doctor's statement to extend the claimant's leave of absence beyond January 20. The claimant did not respond to the employer's request to provide more documentation to extend her leave. When the claimant did not contact the employer, return to work or provide any further medical documentation, the employer no longer considered the claimant an employee as of February 26, 2006.

The claimant's doctor has not released the claimant to return to work as of the date of the hearing, March 27, 2006. The claimant was not released to return to work when she filed her claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharged her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a.

The record indicates that after the claimant filed a claim for unemployment insurance benefits, the employer's representative indicated the claimant worked from April 5, 2004 through November 12, 2004 because she quit to attend school. The claimant argued that she did not quit in November 2005 and the employer did not dispute this fact. Since neither party participated in the fact-finding interview this inaccurate information was not resolved until the date of the hearing. The evidence indicates the claimant's last day of work for the employer was December 13, 2005. The claimant was no longer an employee as of February 26, 2006.

The representative's incorrect information regarding the claimant's separation date was sent after the employer sent the February 13 letter to the claimant. This point is mentioned because the claimant testified a Workforce representative informed her that the employer reported she

had quit in mid-November. It appears the first time a Workforce representative would have known this was February 22 when the representative's decision was issued. Therefore, when the claimant received the employer's February 13, 2006 letter, she had no idea the employer's representative indicated she had quit in mid-November 2005.

The claimant did not respond to the employer's February 13 letter because she asserted the plant superintendent told her she had been discharged for excessive absenteeism in late January. The fact the employer sent the claimant a February 13 letter requesting medical documentation to extend her medical supports the employer's assertion the claimant's employment separation did not occur until February 26, 2005. The claimant's failure to contact the employer in response to the February 13, 2006, is troublesome because the letter specifically indicated the employer's health service department had not received any doctor's statement to extend the claimant medical leave beyond January 20, 2006. The letter also states that the claimant's failure to provide medical documentation would result in her removal from the employer's active employment roster. When the employer sent the claimant the letter, the employer still considered the claimant an active employee. The claimant's failure to contact the employer about extending her medical leave indicates she had no intention of returning to work in mid-February 2006. Even though the claimant contended she had already been discharged when she received the February 13, her failure to follow up and ask the employer why she received a letter to extend her leave if she had already been discharged indicates the claimant did not want to continue her employment. As of February 26, the claimant quit her employment by abandoning her job.

The claimant may have had personal reasons for failing to provide the employer with the necessary documentation. The claimant also had personal reasons for failing to contact the employer's human resource department to clear up any potential misunderstanding about whether the employer's health department had medical documentation from the claimant or whether the claimant still had a job. The claimant's failure to take any action to remain an employee indicates she quit for reasons that do not qualify her to receive unemployment insurance benefits.

Each week a claimant files a claim for benefits, she must be able to and available for work. As of February 5, 2005, the claimant's doctor had not released the claimant to work. Therefore, she was not able to and available for work as of February 5, 2006.

#### DECISION:

The representative's February 22, 2006 decision (reference 01) is modified, but the modification has no legal consequence. The claimant voluntarily quit her employment as of February 26, 2006, for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of February 26, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. As of February 5, 2006, the claimant was not able to or available for work because her doctor had not released her to return to work. Even though no employment separation occurred as of February 5, the claimant was not eligible to receive benefits as of February 5, 2006, because she was not able to work.

dlw/tjc