

**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**

**EDUARDO A MEDINA  
513 E 10<sup>TH</sup> ST  
MUSCATINE IA 52761**

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

**Appeal Number: 05A-UI-12285-RT  
OC: 11-06-05 R: 04  
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, 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 96.5-1 – Voluntary Quitting  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Tyson Fresh Meats, Inc., filed a timely appeal from an unemployment insurance decision dated November 29, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Eduardo A. Medina. After due notice was issued, a telephone hearing was held on December 21, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the Notice of Appeal. Kris Travis, Employment Manager at the employer's plant in Columbus Junction, Iowa, where the claimant was employed, participated in the hearing for the employer. The administrative law judge takes

official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time production laborer from October 24, 2000 until he voluntarily quit on October 14, 2005 which was his last day of work. The claimant worked that day and then never returned to work thereafter. The claimant was absent as a no call no show without notifying the employer for the entire week of October 17 through the 21, 2005 and through the week of October 24 through the 28, 2005. On October 27, 2005, the employer decided to terminate the claimant as a voluntary quit. The claimant has never returned to the employer and offered to go back to work. The employer asked several friends of the claimant where he was, and they responded that he had to go to Mexico but knew no other details. The employer's witness, Kris Travis, Employment Manager at the employer's plant in Columbus Junction, Iowa, knew nothing about any depression condition on the part of the claimant or any treatment provided to the claimant for such condition or any doctor's statement alluding to that condition. Pursuant to his claim for unemployment insurance benefits filed effective November 6, 2005, the claimant has received unemployment insurance benefits in the amount of \$2,268.00 as follows: \$324.00 per week for seven weeks from benefit week ending November 12, 2005 to benefit week ending December 24, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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.

The employer's witness, Kris Travis, Employment Manager of the employer's plant in Columbus Junction, Iowa, credibly testified that the claimant voluntarily quit when he failed to show up for work on and after October 17, 2005. The claimant's last day of work was October 14, 2005. She had no knowledge as to whether the claimant had a depression condition or had been treated for such condition or that he had provided a doctor's statement for such condition. The claimant never returned to the employer and offered to go back to work. On the record here, and in the absence of any evidence to the contrary, the administrative law judge is constrained to conclude that the claimant left his employment voluntarily effective October 14, 2005, which was his last day of work. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See

Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for his quit. Ms. Travis credibly testified that the employer asked some friends of the claimant where he was and they responded that he had to go to Mexico. Leaving work voluntarily to move to a different locality is not good cause attributable to the employer. Even assuming that the claimant had some kind of compelling personal reason, leaving work voluntarily for a compelling personal reason when the period of absence exceeds ten working days is also not good cause attributable to the employer. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective October 14, 2005, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,268.00 since separating from the employer herein on or about October 14, 2005 and filing for such benefits effective November 6, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of November 29, 2005, reference 01, is reversed. The claimant, Eduardo A. Medina, is not entitled to receive unemployment insurance benefits until, or unless, he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. The claimant is overpaid unemployment insurance benefits in the amount of \$2,268.00.

kkf/kjw