

**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**

**WILLIAM T BURNS  
810 E ANSON  
MARSHALLTOWN IA 50158**

**TYSON PREPARED FOODS INC  
TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-05458-H2T  
OC: 04-24-05 R: 02  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 11, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 23, 2005. The claimant did participate. The employer did participate through Ron Wood, Human Resources Manager. Employer's Exhibit One was received. The record was kept open until June 30, 2005 for the claimant to submit a doctor's note. The note was received and is marked as Claimant's Exhibit A and is entered into evidence.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a maintenance team member full time beginning May 3, 2004 through April 8, 2005 when he voluntarily quit. The claimant was in an automobile accident on February 21, 2005. The claimant notified the employer of the accident on February 22, 2005 and that he would not be into work. When he was released to return to work the claimant provided the employer with a note that covered the period from March 8, 2005 through April 2, 2005. The employer asked the claimant to provide a doctor's note that indicated he was unable to work for the period from February 22 through March 8. The claimant never submitted the required doctor's note to the employer and was discharged on April 8, 2005.

At the hearing the claimant was equivocal in his testimony on when he first sought medical treatment after the accident. The medical records make it clear that the claimant did not seek treatment until March 8, 2005. The claimant has submitted a note from McFarland Clinic that indicates only that he "missed work 2-21-05 -3-8-05." There is no indication in the note that a doctor took the claimant off work during that time period or that he was physically unable to work.

The claimant was told during a meeting on March 25, 2005 that in order to return to work he had to present a doctor's note to cover the period from February 21 through March 8 and that such note had to be submitted by April 2, 2005 when he was released to return to work. The claimant never submitted the note nor did he call in to report his absence for April 5, 6 and 7. The employer considered the claimant a voluntary quit when he failed to return to work after the end of his medical leave with a note covering the period of his absence.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following

reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2 (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but were not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer.

It is not unreasonable for an employer to require some type of documentation when an employee fails to appear for work for two weeks and fails to call in to provide a reason why he has not appeared for work. While one of the claimant's notes covered the period from March 8, through April 2, he was still left with no note covering the period from February 22 through March 7. He still has not provided a note from a doctor indicating he was incapable of working from February 22 through March 7. His note only indicates that he did not work during that time period. That, the employer already knows. The administrative law judge is persuaded that the claimant did not seek medical treatment after the accident until almost two weeks later. If he was truly incapable of working, he would have sought treatment much sooner. Nor did the claimant report to work or call in to explain why he was not at work. The claimant was given until April 2, to provide the documentation. He did not do so, nor did he call in for his shift on April 5, 6 and 7. The claimant was a three-day no call-no show in contravention of the employer's policy. He voluntarily quit his employment without good cause attributable to the employer. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The May 11, 2005, reference 01, decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,576.00.

tkh/pjs