

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

DAVID E MASK
PO BOX 72
BRIGHTON IA 52540

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

Appeal Number: 05A-UI-03596-CT
OC: 07/04/04 R: 03
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

David Mask filed an appeal from a representative's decision dated March 30, 2005, reference 05, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on May 5, 2005. Mr. Mask participated personally and offered additional testimony from Wendell Redmond. The employer participated by Eva Garcia, Community Liaison.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Mask began working for Tyson on December 14, 2004

as a full-time maintenance mechanic. He last performed services on February 20, 2005. He was not scheduled to work on February 21 and 22. He called to report absences due to illness on February 23 and 24. He did not call thereafter and was, therefore, presumed to have voluntarily quit. Mr. Mask came to the workplace on March 4, 2005 to turn in equipment belonging to Tyson. He had not been told that he was discharged when he stopped calling in.

Mr. Mask stopped calling to report his absences because he assumed he was going to be discharged because of his attendance. He was still within his 90-day probationary period when he began reporting absences on February 23. Probationary employees are allowed six attendance points before being subject to discharge. Consecutive days missed due to illness are only assessed one point. Mr. Mask had been notified on February 10 that he had five points. When an individual reaches the discharge stage, the employer determines if the accumulated absences warrant discharge. No decision had been made regarding Mr. Mask's continued employment when he stopped calling in.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Mask was separated from employment for any disqualifying reason. The administrative law judge concludes that he initiated the separation when he failed to report for work or contact the employer after February 24, 2005. Although he testified during the hearing that he was notified by security on February 25 that he had been discharged, the administrative law judge did not find this testimony credible. During the fact-finding interview held on March 29, 2005, Mr. Mask stated that no one actually told him he was fired. He stated during the fact-finding interview that he knew he would be terminated and, therefore, did not contact his employer again. Inasmuch as no one had notified Mr. Mask that he had been discharged, it was his decision to discontinue reporting to the employer. Although the employer may later have terminated him due to his attendance, no decision had been made by the employer. The fact that there was the possibility of discharge did not relieve Mr. Mask of the obligation to continue reporting to the employer until such time as a decision was made by the employer. Mr. Mask preempted the employer's decision by abandoning his job. For the above reasons, the separation is considered a voluntary quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Having taken the position that he was discharged, Mr. Mask did not offer testimony as to why he would quit the employment. The evidence of record does not establish any good cause attributable to the employer for quitting. Accordingly, benefits are denied.

DECISION:

The representative's decision dated March 30, 2005, reference 05, is hereby affirmed. Mr. Mask voluntarily quit his employment with Tyson for no 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs