

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KATHY L MAXWELL**  
Claimant

**APPEAL NO. 08A-UI-04606-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 01/20/08 R: 04  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Kathy Maxwell (claimant) appealed a representative's May 7, 2008 decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Tyson Fresh Meats (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 29, 2008. The claimant participated personally. The employer participated by Mary Baylor, Employment Manager.

**ISSUE:**

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer and whether the claimant is available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 12, 2006, as a full-time first logger. The claimant called in sick on January 7 and 8, 2008. The employer did not hear from the claimant after January 8, 2008. Continued work was available had the claimant not resigned.

The claimant quit work because of the commuting distance to work and to seek employment with Sedona Staffing, a temporary agency.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work 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(2) and (3) provide:

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:

(2) The claimant moved to a different locality.

(3) The claimant left to seek other employment but did not secure employment.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. She stopped appearing and quit work. When an employee quits work because of the commuting distance to the job and knew the distance when she was hired, her leaving is without good cause attributable to the employer. Likewise, when an employee quits work to seek other employment but has not secured other employment, her leaving is without good cause attributable to the employer. The claimant left work because of the commute to work even though she knew the distance when she was hired. She also left to seek employment with a temporary agency but had not secured other employment. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes she is.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

There was no evidence presented at the hearing to show the claimant was not able and available for work. The claimant is able and available for work with another employer.

**DECISION:**

The representative's May 7, 2008 decision (reference 04) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is able and available for work with another employer.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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