

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDRE A SIMS
Claimant

APPEAL NO. 10A-UI-09863-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/23/10
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 30, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was started on August 30, 2010 and completed on August 31, 2010. Claimant Andre Sims participated. Kris Travis, Employment Manager, represented the employer and presented additional testimony through Chuck Mogler, Production Cut Floor Supervisor. Exhibits One through Four were received into evidence.

ISSUE:

Whether Mr. Sims separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Andre Sims was employed by Tyson Fresh Meats as a full-time production employee from 2007 until May 26, 2010, when he voluntarily quit the employment. Mr. Sims' immediate supervisor was Chuck Mogler, Production Cut Floor Supervisor. On May 26, 2010, Mr. Sims left the production floor mid-shift, went to the human resources department, completed a separation form indicating that he was quitting the employment, and then left the work place. Mr. Sims was upset with the employer's expectation that he purchase a piece of equipment he needed to perform his duties but had misplaced. Mr. Sims was also upset with Mr. Mogler for not finding Mr. Sims' complaints about alleged coworker misconduct credible. During the days preceding Mr. Sims' quit, he had voiced his dissatisfaction with his supervisor, with his coworkers, and with the employment, through profanity-laced tirades.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local

Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence in the record establishes a voluntary quit, not a discharge. The weight of the evidence indicates that Mr. Sims left the production line mid-shift, went to the human resources department, completed a paper to indicate he was voluntarily separating from the employment, and did in fact voluntarily separate from the employment.

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 weight of the evidence in the record fails to support Mr. Sims' allegation that he was being harassed by Latino coworkers. The evidence indicates instead that Mr. Sims voluntarily quit due to dissatisfaction with the work, a personality conflict with his supervisor, and inability to work with other employees. Each of these reasons for quitting is presumed under the law to be without good cause attributable to the employer. See 871 IAC 24.25(6), (21), and (22).

Mr. Sims voluntarily quit the employment without good cause attributable to the employer. Mr. Sims is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Mr. Sims.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's June 30, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw