

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESA PUENTE GARCIA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 18A-UI-03725-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/11/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 15, 2018, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on April 18, 2018. Claimant participated through CTS Language Link Spanish language interpreter 11412. Employer participated through human resource manager Jeaneth Ibarra.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker since 2007. The separation date was November 14, 2017. Her last day of work was February 27, 2017. She did not work between then because she was pregnant. She moved to Washington state on February 20, 2018. She was involuntarily separated due to her failure to return from leave of absence that began on February 27, 2017, and ended on August 14, 2017. The employer sent a letter on July 24, 2017, notifying claimant about the upcoming leave of absence expiration date, and if she could not return to work, she should provide updated documentation. The employer requested additional documentation, by certified mail, to extend the leave of absence on October 4, 2017, and was received on October 16, 2017. The receipt was signed by Alejandra Savara. The letter gave a five-day deadline for response. There was no response. Her medical professional released her to work in October 2017, but she did not report to work. The employer mailed her termination letter on November 14, 2017, and gave her another five days to contact the employer. All letters were sent to her accurate mailing address, which she shares with Carlos Savara. She did not contact the employer until December 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25 provides, in pertinent part:

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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

The employer's testimony is more credible than that of claimant who unconvincingly denied having received any of the four letters sent to her correct address during four separated months. Even had she not received any of the letters, she knew when the leave of absence period ended and did not return to work or communicate with the employer about her current medical status. Then she failed to report for work or communicate with the employer upon her medical release to return to work. Claimant's failure to return to work renders the separation job abandonment without good cause attributable to the employer.

DECISION:

The March 15, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs