

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIAL R WENSEL
Claimant

APPEAL NO: 13A-UI-09611-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/02/13

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Danial R. Wensel (claimant) appealed a representative's June 21, 2013 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2013. The claimant participated in the hearing. Ben Torres appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 5, 2012. He worked full time as a process safety coordinator in the employer's Denison, Iowa beef slaughter facility. His last day of work was May 25, 2013. The employer considered his employment ended as of May 31, 2013 through voluntarily quit by job abandonment.

The claimant called in and left messages on May 27 and May 28 indicating that he would be absent because he "needed some time off." He did not indicate how much time he would need off beyond the two days that he called in and left the message. He was a no-call, no-show for work on May 29, May 30, and May 31, so as of May 31 the employer concluded that he had voluntarily quit. His health insurance then was cancelled as of June 1, 2013.

On about June 1 the claimant attempted to get a prescription filled, and learned that his insurance had been cancelled, and that it had been cancelled because the employer considered his employment to have ended. The claimant concluded that he had been fired, but he did not

contact the employer to seek to explain the extenuating circumstances as to why he had been off work after May 28 and why he had not called.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code § 96.5-1; 96.5-2-a.

The claimant asserts that his separation was not “voluntary” as he had not desired to end the employment; he argues that it was the employer’s action or inaction which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee under which an intent to quit can be inferred. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Even though the claimant may have had extenuating circumstances that might have justified his temporarily leaving the employment, he did not seek to return to the employer within ten days. 871 IAC 24.25(20). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative’s June 21, 2013 decision (reference 02) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of May 31, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs