

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZAY P KUAWOGAI
Claimant

APPEAL NO. 07A-UI-03942-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

**OC: 03/11/07 R: 03
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Zay Kuawogai filed a timely appeal from the April 11, 2007, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on May 2, 2007. Mr. Kuawogai participated. The employer did not participate. After the record had closed, the administrative law judge learned that the employer had provided a telephone number for the hearing and named a representative, but that that information had not been forwarded to the administrative law judge. The administrative law judge contacted the employer, but concluded it was not necessary to reopen the record in light of the fact that the decision is favorable to the employer.

ISSUE:

Whether the claimant voluntarily quit the employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Zay Kuawogai was employed by Tyson Fresh Meats as a full-time saw operator for one month until September 13, 2006, when he voluntarily quit. At the time Mr. Kuawogai commenced the employment, he resided with a family friend in Waterloo, where the employer was located. Mr. Kuawogai's living arrangements changed and he commenced commuting to the employment in Waterloo from his home in Cedar Rapids. Mr. Kuawogai commuted from Cedar Rapids for three or four days, but decided to quit the employment due to the commute and the price of gasoline. The employer continued to have work available to the claimant.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

871 IAC 24.25(2) provides:

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.

871 IAC 24.25(30) provides:

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:

- (30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

The evidence in the record indicates that Mr. Kuawogai voluntarily quit the employment because he had moved from Waterloo to Cedar Rapids and did not wish to continue to commute to the employment. Mr. Kuawogai's voluntarily quit was without good cause attributable to the employer. Accordingly, Mr. Kuawogai 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 the Mr. Kuawogai.

DECISION:

The claims representative's April 11, 2007, reference 04, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css