

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY R WILLIAMS
Claimant

APPEAL NO. 10A-UI-14257-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 09/12/10
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Rodney Williams filed a timely appeal from the October 15, 2010, reference 04, decision that denied benefits based on an Agency conclusion that Mr. Williams did not meet the work ability requirements of the law. After due notice was issued, a hearing was held on December 1, 2010. Mr. Williams did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Elena Reader, Human Resources Manager, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-14258-JTT.

ISSUES:

Whether Mr. Williams has been able to work and available for work since he established his claim for benefits.

Whether Mr. Williams separated from his employment at Tyson Fresh Meats for a reason that would disqualify him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rodney Williams was employed by Tyson Fresh Meats, Inc., as a full-time general maintenance mechanic. Mr. Williams started the employment in March 2009 and last performed work some time before July 6, 2010. On July 6, Mr. Williams commenced calling in absences due to illness. Mr. Williams called in such absences on July 6, 7, 11, 12, 13, 17, 20, 21 and 26 and August 2. Then Mr. Williams ceased making contact with the employer. Mr. Williams was absent without notifying the employer on August 3, 4, 8, and 9. The employer then did not hear further from Mr. Williams until August 20, 2010, when he belatedly delivered an application for leave. By that time, the employer had already documented his separation from the employment as a result of the no-call, no-show absences.

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.

Mr. Williams failed to participate in the hearing and thereby failed to present any evidence to suggest that he was discharged from the employment or that he voluntarily quit for good cause attributable to the employer. The weight of the evidence in the record establishes a voluntary quit effective August 3, 2010, when Mr. Williams ceased appearing for work or maintaining contact with the employer. The evidence in the record establishes that Mr. Williams was out of contact with the employer from August 3 until August 20, 2010 and had not been approved for a leave of absence. The employer reasonably concluded that Mr. Williams had voluntarily severed the employment relationship.

Because Mr. Williams voluntarily quit the employment without good cause attributable to the employer, he 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. Williams.

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".

871 IAC 24.22(1)a, (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Mr. Williams failed to appear for the hearing and thereby failed to present any evidence toward meeting his burden of providing that he was both able to work and available for work from the time he established his claim for benefits. The administrative law judge concludes that the claimant has failed to meet the work ability and availability requirements the law since he filed his claim for benefits and that same disqualification continued as of the December 1, 2010 hearing date.

DECISION:

The Agency representatives October 15, 2010, reference 04, decision is affirmed. The claimant has failed to demonstrate that he is able to work and available for work. Benefits are denied effective September 12, 2010, the effective date of claim.

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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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