

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KRISTI E KUNKEL
27 – 4TH AVE NE
LEMARS IA 51031

TYSON RETAIL DELI MEATS INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-06530-DWT
OC: 05/29/05 R: 01
Claimant: Appellant (2/R)
)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Kristi E. Kunkel (claimant) appealed a representative's June 20, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Tyson Retail Deli Meats, Inc. (employer) would not be charged because the claimant voluntarily quit her employment without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2005. The claimant participated in the hearing. Matt Chase 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:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 28, 1998. The claimant worked as a full-time production worker. The claimant's last day of work for the employer was December 3, 2004. The claimant hurt her back outside of work in early December and took sick leave. The claimant's injury required her to have back surgery on March 13, 2005. As of April 13, 2005, the claimant had used all of her accumulated sick leave.

The claimant's doctor released her to return to work on May 27, 2005. When the claimant was released, she had permanent work restrictions of no repetitive lifting, bending or twisting. The claimant contacted the employer's benefits coordinator and asked if she could return to work with these restrictions. The claimant learned the employer did not have any work for her with these restrictions.

The claimant's physician, Dr. Michael Giardano, verified in early June that the claimant's condition was not work related. Dr. Giardano advised the claimant to quit her employment because of continued back pain. The claimant was unable to complete an exit interview with the employer in May. The employer completed the exit interview in early July and considered the claimant's employment terminated in early July 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. On May 27, 2005, the claimant involuntarily resigned her employment because her doctor restricted her from doing any repetitive lifting, bending and twisting. The employer did not have any work for the claimant to do with these work restrictions because the claimant's job required her to do work she could no longer do. The claimant's doctor even advised the claimant to quit her employment because the claimant's job required her to lift, bend and twist. Since the claimant did not voluntarily quit her employment, she is qualified to receive unemployment insurance benefits based on the reasons for her employment separation.

Based on the claimant's work restrictions and her prior work experience, an issue of whether the claimant is able to and available for work is remanded to the Claims Section to investigate and issue a written decision.

DECISION:

The representative's June 20, 2005 decision (reference 01) is reversed and remanded to the Claims Section. The claimant did not voluntarily quit her employment on December 3, 2004. Instead, the claimant involuntarily quit her employment on May 27, 2005, when she was released to work with permanent work restrictions. Based on the reasons for her employment separation, the claimant is qualified to receive unemployment insurance benefits as of May 29, 2005. As a result of the claimant's permanent work restrictions and her prior work experience, an issue of whether the claimant is able to and available for work is remanded to the Claims Section to investigate and issue a written decision.

dlw/sc