

**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**

**THOMAS L RODGERS  
PO BOX 522  
OELWEIN IA 50662**

**TYSON RETAIL DELI MEATS INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-08854-CT  
OC: 05/30/04 R: 04  
Claimant: Appellant (1)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit  
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Thomas Rodgers filed an appeal from a representative's decision dated August 3, 2004, reference 05, which denied benefits based on his separation from Tyson Retail Deli Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on September 9, 2004. Mr. Rodgers participated personally. The employer participated by Brooke Salger, Human Resources Manager.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: The representative's decision which is the subject of this appeal was mailed to Mr. Rodgers at his address of record on August 3, 2004. He went to the local Workforce Development office in Cedar Rapids on August 11 with the intent of filing an appeal. He felt discouraged from doing so as he was told he did not have grounds on which to prevail. He later went to the local office in Oelwein on August 16 and was allowed to file an appeal.

Mr. Rodgers began working for Tyson on June 22, 2004 as a full-time laborer. He was absent on June 28 because the starter on his vehicle went out. On July 1, his vehicle was repossessed and he did not have any other means of getting to and from work. He notified the employer of his situation and continued to call in through July 8 reporting that he would be absent due to lack of transportation. He stopped calling after July 8 because he believed he had accumulated a sufficient number of attendance points during the probationary period that would result in him losing his job. As of the date of the hearing, Mr. Rodgers still did not have transportation other than a bicycle. He did not feel he could ride his bicycle the 15 miles to work. The employer had not arranged to provide him with transportation.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Mr. Rodgers' appeal should be considered timely filed. He was credible in his testimony concerning what he was told at the Cedar Rapids Workforce Development office. He made a good-faith effort to file an appeal on August 11, well before the August 13 deadline. Although the Cedar Rapids office may not have intended to discourage Mr. Rodgers from filing an appeal, the fact remains that he felt he had been discouraged. The administrative law judge resolves any doubt in his favor and concludes that the appeal filed on August 16, 2004 shall be deemed timely filed.

The next issue in this matter is whether Mr. Rodgers was separated from employment for any disqualifying reason. The separation was due to the fact that he no longer had transportation to and from work. Although he never told the employer that he was quitting, he was unable to continue the employment because he could not get to work. This was not a situation in which he intended to return to the employment within a few days after resolving his transportation issues. There were no plans to return to the employment in the near future. Under the circumstances, the administrative law judge concludes that Mr. Rodgers was forced by his circumstances to quit the employment. An individual who quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code Section 96.5(1). An individual who leaves employment because he loses his means of transportation is presumed to have quit for no good cause attributable to the employer. See 871 IAC 24.25(1). Inasmuch as Tyson was not responsible for providing Mr. Rodgers with transportation, his separation was not for any cause attributable to the employer.

Even if the administrative law judge were to conclude that Mr. Rodgers had been discharged, he would still not be entitled to job insurance benefits. His absences on and after July 1 were due to lack of transportation. Absences caused by matters of purely personal responsibility, such as transportation, are not considered excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Therefore, Mr. Rodgers' absences after July 1 would be considered unexcused. The fact that he properly reported the absences to the employer would

not make them excused absences. His continued unexcused absences due to transportation issues would constitute excessive unexcused absenteeism and result in a disqualification from benefits.

After considering all of the evidence, the administrative law judge concludes that Mr. Rodgers is not entitled to receive job insurance benefits.

DECISION:

The representative's decision dated August 3, 2004, reference 05, is hereby affirmed. Mr. Rodgers quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs