

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EBONY M WALKER
Claimant

APPEAL NO. 10A-UI-03699-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 12/06/09
Claimant: Appellant (5)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(16) – Incarceration

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated March 10, 2010, reference 05, that held she was discharged for misconduct on July 23, 2009, and benefits are denied. A telephone hearing was held on April 22, 2010. The claimant did not participate. Jim Hook, HR Manager, participated for the employer. .

ISSUE:

Whether the claimant voluntarily left with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered the evidence in the record, finds that: The claimant began work on June 22, 2009, as a full-time production employee, and last worked on July 23, 2009. On July 22, the claimant signed an employment separation form that she was leaving effective July 23 due to an incarceration. The employer accepted the separation statement though continuing employment was otherwise available.

The claimant failed to respond to the hearing notice.

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.

871 IAC 24.25(16) 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:

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer on July 23, 2009, because of her incarceration.

The incarceration is considered a quitting of employment rather than a discharge, and the employment separation is without good cause.

DECISION:

The decision of the representative dated March 10, 2010 reference 05 is modified. The claimant was not discharged, but she voluntarily quit without good cause on July 23, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css