

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERIE C BUTLER**  
Claimant

**APPEAL NO. 17A-UI-07194-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 06/25/17**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Sherie Butler filed an appeal from the July 14, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Butler voluntarily quit on February 10, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 2, 2017. Ms. Butler participated. The employer registered a telephone number for the hearing and named a representative, Cathelena Mayes. At the time of the hearing, Ms. Mayes was not available at the number the employer had registered. Rosie Saucedo, Human Resources Clerk, answered the call. Ms. Saucedo advised, upon the authority of Jim Hook, Human Resources Manager, that the employer did not have anyone available to represent the employer at the hearing and was waiving its participation in the hearing. Exhibit A was received into evidence.

**ISSUE:**

Whether Ms. Butler separated from the employment for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Sherie Butler was employed by Tyson Fresh Meats, Inc. as a full-time production worker from 2007 and last performed work for the employer on February 10, 2017. Ms. Butler was assigned to the second shift. Her work hours were 3:00 p.m. to 11:30 p.m., Monday through Friday. Her supervisor was Production Supervisor Ryan Lund.

At the time Ms. Butler went off work in February 2017, she commenced an approved medical leave of absence. Ms. Butler's primary care provider, Amber Collum, took her off work due to suspected rheumatoid arthritis. Ms. Butler does not know Ms. Collum's professional credentials, but thinks she might be a nurse practitioner. At the time Ms. Butler went off work, she provided the employer with a note from Ms. Collum that indicated she needed to go off work until she could be seen by a medical specialist. The employer has a short-term disability benefit that begins after an employee has been absent five days due to illness and continues up to 13

weeks, provided the employee continues to provide doctor slips to support the continued need to be off work.

On February 22, 2017, Ms. Butler was evaluated by the medical specialist. That doctor initially suspected rheumatoid arthritis and osteoarthritis. The doctor provided Ms. Butler with a note indicating that she should remain off work until her next appointment, which was set for March 21 or 22, 2017. Ms. Butler faxed the document to the employer in support of her need to remain off work. When Ms. Butler returned to the doctor in March, he provided a note that took her off work for another month, until her next follow up appointment. When Ms. Butler returned to the doctor in April, he provided her with a note that took her off work for another month, until her next follow up appointment. The April note indicated that Ms. Butler needed to remain off work through May 21, 2017. Ms. Butler provided the March and April notes to the employer in support of her continuing need to be off work.

When Ms. Butler returned to the medical specialist on May 23, 2017, the doctor advised Ms. Butler that he did not think she had arthritis. The doctor released Ms. Butler to return to work without restrictions and referred her back to her primary care provider. The doctor declined to provide Ms. Butler with any additional notes indicating that she needed to remain off work. Ms. Butler provided to the employer the medical note indicating that she was released to return to work without restrictions. Though the medical specialist released Ms. Butler to return to work, Ms. Butler did not return to the employment or provide the employer with any medical documentation to support a need to remain off work.

On May 25, 2017, Ms. Butler met with her primary care provider. The primary care provider continued to believe that Ms. Butler had arthritis. The primary care provider ruled out coronary issues. The primary provided wanted Ms. Butler to return to the medical specialist. Ms. Butler did not discuss with her primary care provider whether she should remain off work or return to work. The primary care provider did not provide Ms. Butler with documentation to support a continued need to be off work.

Once Ms. Butler was released to return to work in May 2017, she made no further contact with the employer until July 12, 2017. At that time, she learned that the employer had documented no-call/no-show absences on May 22, 23, 24, 25, 26 and May 29, 2017. The employer had not sent anything to Ms. Butler to indicate that the employer was ending the employment. When Ms. Butler made contact with the employer on July 12, 2017, the employer had Ms. Butler sign a document that memorialized her separation from the employment.

Ms. Butler established a claim for benefits that was effective June 25, 2017.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Admin. Code r. 871-24.22(2)j(1)(2)(3) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

- (1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.
- (2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.
- (3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

- d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

- a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

- b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job. In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. Ms. Butler voluntarily quit the employment when she failed to return to the employment at the end of the approved leave of absence. Ms. Butler had provided no medical documentation to the employer to support a need to be off work beyond May 21, 2017. The evidence fails to establish a medical issue that necessitated Ms. Butler remaining off work as of May 23, 2017, when the medical specialist released her to return to work without restrictions. No medical provider advised Ms. Butler to continue off work beyond May 21, 2017. Because Ms. Butler voluntarily quit the employment without good cause attributable to the employer, she is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Butler must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The July 14, 2017, reference 01, decision is affirmed, but the separation date is corrected to May 23, 2017. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs