

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID ALVARADO
Claimant

APPEAL NO. 09A-UI-08598-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 04/26/09
Claimant: Appellant (2)

Section 96.5-1 Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 12, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 20, 2009. Claimant participated personally. Employer participated by John Carreras. Ike Rocha provided Spanish interpretation for the hearing.

ISSUE:

The issue in this matter is whether claimant voluntary quit his employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was a general production laborer. He started his work on March 11 2008 and was terminated on March 24, 2009. The claimant was terminated on March 24, 2009 for accumulating 14 points. The claimant did not call in or show up at work on March 14, 16, 17, 18, 19 and 20. Each no call was considered 3 points. The claimant asked for time off to be with his sick mother in Mexico. The claimant asked for two weeks off and was told by his supervisor Scott (last name not known) he could not take the time off. His mother had been hospitalized and had been released by March 14, 2009. The claimant was in Mexico on March 14, 2009. The claimant returned to Iowa and reported to work on March 31, 2009 and was informed he had been terminated.

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.

Iowa Code section 96.5-1-f 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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

The claimant asked for permission to take time off work to visit his ill mother. The claimant had one week of vacation but needed two weeks to make the trip. The claimant was denied permission for leave. The claimant decided he needed to visit his mother even though permission had been denied by his supervisors. The claimant was terminated on March 24, 2009. This is less than ten working days after he started his unauthorized leave. The claimant's supervisor was aware the claimant had a compelling family medical reason to be absent. The claimant was terminated on March 24 while he left the employing unit for less than 10 working days after he left for compelling personal reasons.

The claimant worked for the employer for one year as of March 11, 2009 and may have been eligible for leave under the Family Medical Leave Act (FMLA). The FMLA is informative about the standards and criteria to apply to determine if the claimant had a compelling personal reason to leave his employer on a temporary basis. Whether the claimant was eligible for FMLA leave is not determined in this decision. His leave request, assuming he worked 1,250 hours in the preceding 12 months, would be covered under the FMLA.¹ The claimant's mother had been hospitalized and thus had a serious medical condition under the FMLA. The claimant asked in advance to take time off, but was denied. His request was for one week vacation and one week unpaid leave, the length of leave was allowable under the FMLA. Thus under the standards established by federal law the claimant's request for leave appear to be within limits set by the FMLA.

The claimant was terminated on March 24, 2009. This is less than ten working days when he was absent for personal reasons. The claimant's supervisor was aware the claimant had a compelling reason to be absent. Under Iowa Code 96.5-1-f, the claimant's termination is considered to be with good cause attributable to the employer.

¹See U.S. Department of Labor Fact Sheet #28. Last visited 7/20/09
<http://www.dol.gov/esa/whd/regs/compliance/whdfs28.pdf>

DECISION:

The decision of the representative dated June 12, 2009, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs