

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFERY KLEPPE**

Claimant

**APPEAL NO: 13A-UI-11295-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 09/08/13**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 27, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 31, 2013. The claimant participated in the hearing with his witness/wife Jean Kleppe. Kristi Fox, Human Resources Clerk, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time load out sweeper for Tyson Fresh Meats from June 8, 2009 to September 10, 2013. He was discharged when the employer determined he abandoned his job by failing to call or show up for work for nine consecutive days.

The claimant aggravated a previous non-work-related back injury and called the employer to report he would not be at work August 8, 9, 11, 15, 16, 18, 21 and 22, 2013. He did not call to report his absences due to his back issues August 26 through September 5, 2013. The claimant's wife made two calls for him but was told the employer's policy required that employees call in themselves. The claimant testified he began calling the employer immediately after reinjuring his back but did not call August 26 through September 5, 2013. He stated he was bedridden and in a great deal of pain. The claimant had a cell phone for a period of time that he shared with his wife and then they had a home phone installed and gave up the cell phone. The home phone was a cordless phone.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Whether due to being nervous about the appeal hearing or dishonesty, the claimant's testimony was not consistent. He testified they had no cell phone but after his wife testified they did in fact have a cell phone during part of the time he was off work, he changed his testimony. When they gave up their cell phone they signed up for a home phone. The most important issue, however, is why he was able to call the employer to report his absences between August 8 and August 22, 2013, immediately following the aggravation of his back injury, but then failed to do so from August 26 through September 5, 2013, several days after he reinjured his back and when he would have presumably been in better shape than right after aggravating his prior back injury. The claimant had access to a cell phone during many of his absences and could have called to report his absences before his wife left for school in the morning and then had access to a cordless home phone, which he could have used to call the employer to notify it he would be absent. The claimant could offer no explanation as to why he did not call the employer between August 26, 2013 and September 5, 2013. Inasmuch as the claimant failed to report for work or notify the employer for nine consecutive work days in violation of the employer's policy, he is considered to have voluntarily left his employment without good cause attributable to the employer. Therefore, benefits are denied.

**DECISION:**

The September 27, 2013, reference 01, decision is affirmed. The claimant voluntarily left his employment without 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 benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs