

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

JOHN C NICHOLS  
193 LEHMAN CR  
WATERLOO IA 50703

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

Appeal Number: 04A-UI-09045-DWT  
OC: 07/25/04 R: 03  
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 are 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

STATEMENT OF THE CASE:

John C. Nichols (claimant) appealed a representative's August 13, 2004 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because he voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 14, 2004. The claimant participated in the hearing. Dave Duncan, the human resource manager for the Waterloo complex, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2003. He worked as a full-time hourly production team member.

The claimant reported he hurt his hand and shoulder at work on June 14, 2004. The claimant reported his injury to the employer. The employer referred the claimant to a doctor who works with the employer's workers' compensation insurance carrier. The claimant was placed on light-duty work and had exercises to do as part of his physical therapy. The claimant concluded the exercises he was told to do aggravated his hand and shoulder injuries. The claimant left work early on June 30, 2004.

Although the doctor who treated the claimant did not restrict him from working, the claimant started calling in sick on July 1. The claimant called in sick July 1 through August 6, 2004. During the week of July 25, 2004, the claimant asked the doctor who treated him for a doctor's statement verifying he had been unable to work since July 1. The doctor would not provide the claimant with the requested statement and told the claimant he would not be surprised if the claimant did not have a job when he returned to work.

The claimant established a claim for unemployment insurance benefits during the week of July 25, 2004. The claimant saw a doctor of his own choosing the first week of August. The claimant did not ask this doctor for a statement indicating he could not work. Instead, the claimant told this doctor he was not employed. The claimant assumed he was no longer an employee because the first doctor would not verify that he was unable to work as of July 1.

The claimant did not call or report to work after August 6. The claimant received the employer's certified letter on August 5 indicating he had to provide the employer with medical documentation by August 9 verifying he had been unable to work as of July 1 so he could be placed on a leave of absence. The letter also indicated that if the claimant did not provide the requested documentation, he would be removed as an active employee.

The claimant did not call or report to work after August 6, 2004. The employer considered the claimant to have abandoned his job.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The evidence establishes the claimant quit his employment. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quit with good cause if he leaves employment because continued employment would be detrimental to his health. However, a claimant must present competent evidence that continued employment would be detrimental to his health to justify the employment termination and inform the employer that he intends to quit unless reasonable

accommodations are made. 871 IAC 24.26(6)(b). The claimant did not present any evidence establishing he could not return to work as of July 1 or that he contacted the employer on July 1 indicating he needed accommodations to continue working. The claimant did not satisfy the requirements of 871 IAC 24.26(6)(b).

The facts establish the claimant abandoned his job by failing to return to work. The doctor the employer referred the claimant to had no authority to discharge the claimant. This doctor, however, had a right to express his opinion that he would be surprised if the employer allowed the claimant to continue working when the doctor did not restrict the claimant from working after June 30, 2004. The claimant made the decision to call in sick as of July 1 and days thereafter. The claimant abandoned his job by failing to go to another doctor in a reasonable time to verify he was unable to work as of July 1.

The claimant may have had compelling personal reasons for quitting. He did not, however, establish good cause for quitting his employment. Therefore, as of July 25, 2004, the claimant is not qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's August 13, 2004 decision (reference 02) is affirmed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of July 25, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/b