

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA ABARCA
Claimant

APPEAL NO: 10A-UI-01866-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 12-20-10
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 20, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on March 17, 2010. The claimant participated in the hearing with Interpreter Ike Rocha. John Carreras, Human Resources Manager and Terry Hanson, Production Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

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 general production worker for Tyson Fresh Meats from October 14, 2008 to December 11, 2009. She completed the exit interview and returned her equipment and her identification card. She told Human Resources Manager John Carreras she was going to Mexico because her parents were in a car accident and she wanted to spend time with them. She also told him her husband works in Columbus, Nebraska, and commuted two hours one way from Denison, Iowa, and they wanted to move closer to where he worked. She had been granted one week off earlier but then asked Production Supervisor Terry Henson if she could have an additional week off to see her parents because she could not afford to fly to Mexico and it would take her five days to drive there each way but because she waited to ask him several other employees had been granted time off for the holidays that the employer could not allow anyone else extra time off and he did not know her parents were injured in a car accident. Mr. Carreras told her to reapply when she returned from Mexico if she wanted to because she was a good worker and they would try to rehire her if they had an opening but the claimant lives in Fremont, Nebraska, two weeks per month and started a new job at Fremont Beef March 15, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant asked for an extra week off over the Christmas holidays to go see her injured parents in Mexico, the employer was not aware her parents were in a car accident and that was one of the reasons she asked for the additional week off work and consequently decided it could not allow her late request for time off because so many employees were off for the holidays already and it would have been short handed. The claimant also wanted to move to a different location because her husband had a two-hour commute each way to his job in Nebraska. Although the employer would have liked to give the claimant the extra time off it was unable to do so and the claimant understandably decided to quit to see her parents so she would not have "a bad mark on her (employment) record." While the administrative law judge is sympathetic to the claimant's situation, the claimant's leaving was not attributable to the employer as she did not leave due to unlawful, intolerable or detrimental working conditions. Therefore, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The January 20, 2010, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly

benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs