

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ISAIAS AYALA
Claimant

APPEAL NO. 13A-UI-03692-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/03/13
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Isaias Ayala (claimant) appealed a representative's March 22, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Tyson Fresh Meats (employer) for insubordination in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 1, 2013. The claimant participated personally. The employer participated by Benito Torres, Human Resources Manager, and Mark Freund, Plant Superintendent.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 4, 2012, as a full-time checker. This was the claimant's sixth period of employment with the employer. On February 28, 2013, production was down and the employer had a clean-up day. The claimant did not want to perform clean up work. He told the employer he would rather go home. The employer told the claimant there was work available but the claimant wanted to go home. The employer warned the claimant that if he left he had to turn in his work identification. The claimant turned in his identification and left work. The claimant's wife also worked for the employer. She left with the claimant but returned approximately 20 minutes later. The employer returned the wife to work. The claimant never returned to work. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work 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(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his actions. He told the employer that he wanted to leave rather than work and quit work. When an employee quits work rather than perform the assigned work, his leaving is without good cause attributable to the employer. The claimant left work rather than perform the job assigned by the employer. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's March 22, 2013 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs