

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

MOSES DARBOH
PO BOX 3130
DES MOINES IA 50316

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

Appeal Number: 06A-UI-05761-DT
OC: 04/30/06 R: 02
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, 4th 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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Moses Darboh (claimant) appealed a representative's May 30, 2006 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 21, 2006. The claimant participated in the hearing. Tom Barragan 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 for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on June 13, 2005. He initially worked full-time as a production worker in the employer's Perry, Iowa, meat processing facility. However, as of August 30, 2005, the claimant requested and the employer granted his request, to go to part-time status.

The reason the claimant requested going to part-time status was that he was a full-time student at a community college, receiving financial aid. The claimant was not doing well in his classes, so the college advised him to cease working full time to avoid jeopardizing his financial aid. His reduced schedule was normally from 6:30 a.m. to 1:00 p.m. on Tuesdays and all day Thursdays, although he attempted to pick up extra hours when possible.

In January 2006, the claimant inquired of the employer whether he could return to full-time status, and he then would have reduced his school to part-time status. The employer indicated that it did not have a need for additional full-time employees at that time, so the claimant continued working part time and going to school full time. However, the last the claimant worked for the employer was the week ending January 21, 2006, during which he worked seven hours. He ceased working after that week as he had transportation problems. He advised the employer that he would seek to return to work after he completed his final exams, which would not be until approximately the end of March 2006 or early April 2006.

The employer's policies allow employees who take time off for schooling to return to work within one year, if work is available at the time the employee seeks to return. The employer does not formally remove the employee from its rolls during that year. The claimant did contact the employer at the end of March or early April and sought to return to work. However, the employer did not have work available for the claimant at that time. The claimant is now interested in returning to full-time employment with the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code § 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 provides that, 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; however, more generally, a quit occurs where the separation was initiated by actions of the claimant, rather than the employer. It was the claimant's actions that changed his position from full-time to part-time in August 2005; the employer was not under any legal obligation to restore the claimant to full-time status at such time as the claimant may have indicated his desire to return to full-time status in January 2006. By ceasing to report for the part-time work he did have after the week ending January 21, 2006, the claimant did take the action to cause at least a temporary separation from employment. The

claimant would be disqualified for unemployment insurance benefits unless he left his employment for good cause.

The claimant has the burden of proving that his leaving was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving employment, even temporarily, due to attending school is not good cause attributable to the employer. 871 IAC 24.25(26). Likewise, leaving employment, even temporarily, due to transportation issues is not good cause attributable to the employer. 871 IAC 24.25(1). While the claimant's reasons were good personal reasons, his absence from employment with the employer exceeded ten days. 871 IAC 24.25(20). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's May 30, 2006 decision (reference 02) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of January 21, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

ld/cs