

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM H KOHNEKAMP**  
Claimant

**APPEAL NO: 07A-UI-02669-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 02/04/07 R: 01  
Claimant: Appellant (5)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

William H. Kohnekamp (claimant) appealed a representative's March 13, 2007 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 April 3, 2007. This appeal was consolidated for hearing with one related appeal, 07A-UI-02670-DT. The claimant participated in the hearing. William Kunneke 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:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on April 14, 2006. He worked full time as a production worker in the cooler area of the employer's Denison, Iowa beef slaughter facility. His last day of work was October 30, 2006.

The claimant had broken his hand at home on or about September 16, 2006. As a result, he began a leave of absence on September 18, 2006. On Monday, October 30, 2006, he attempted to return to work, reporting at his regular 6:00 a.m. start time with a release from his doctor that he could return to full duty. However, within about a half hour, after attempting to perform his regular duties, he was experiencing significant pain in his hand. He went to the nurse who indicated the claimant's condition was not one she could do anything for other than over-the-counter pain medications. When he indicated that the pain was more significant than that, she advised him to go home and to return when he felt better, commenting that perhaps he would feel better in another week.

The claimant did not return to work after October 30. Neither did he go back to his doctor to obtain any further treatment or to obtain an additional excuse to be off work for a longer period of recovery; therefore, there was no medical documentation presented to the employer. When the claimant had not returned to work after October 30 and had made no further contact, the employer sent the claimant a letter by certified mail that the claimant received on November 6, 2006. That letter indicated that the employer needed medical documentation to verify the reason for the extended time off work, that his current absence from work after the release to return to work on October 30 was not excused without the documentation, and that the claimant needed to make contact in that regard by November 17, 2006 or his employment would be deemed ended. The claimant did not make contact with the employer after receiving the letter.

In part, the claimant did not respond because shortly after November 6 he received a letter from a human services agency noting that his child support payments which had been coming out of his paychecks from the employer had ended and that the agency understood that this was because his employment with the employer had ended. He therefore concluded that he had been discharged. Further, despite the only doctor's release which had indicated that the claimant was sufficiently recovered to return to work as of October 30, the claimant did not feel that his hand was fully recovered enough until about November 17; however, even after that time the claimant did not seek to return to work with the employer because he assumed he had been discharged.

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

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct.

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.

The claimant asserts that his separation was not “voluntary” as he had not desired to end the employment; he argues that it was the employer’s action or inaction which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 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, that intent can be expressed in various ways – the focus is on which party’s action actually ended the employment; the semantics of which term is used by the parties is not binding in determining what type of separation actually occurred. There are some actions by an employee which are construed as being a voluntary quit of the employment, such as leaving when work was available and the employee believes they had been or would be discharged but had not been discharged, or when an employee fails to return at the end of an approved leave of absence period. 871 IAC 24.25; 871 IAC 24.22(2)

The claimant did not continue to work when released by his doctor and did not respond or provide the necessary medical documentation after being notified that he needed to take such action in order to preserve his job; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's March 13, 2007 decision (reference 02) is modified with no effect on the parties. The claimant voluntarily left his employment without good cause attributable to the employer. As of November 17, 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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