

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCISCO MORFIN
Claimant

APPEAL NO: 12A-UI-02197-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01-22-12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 1, 2012, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on March 23, 2012. The claimant participated in the hearing with Attorney Derek Johnson and Interpreter Maria Doherty. Kris Travis, Employment Manager, participated in the hearing on behalf of the employer. Misty Rebik, Legal Aid Intern, observed the hearing. Claimant's Exhibits B, C and E were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his 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 production worker for Tyson Fresh Meats from October 9, 2007 to February 6, 2012. The claimant began experiencing work-related elbow and shoulder pain in December 2011 and was taken off work by his physician from January 11 to January 16, 2012, at which time he was released to return to work without restrictions (Claimant's Exhibit E). The claimant was a no-call no-show from January 20 through February 2, 2012. He met with Human Resources Manager David Duncan February 2, 2012, and due to the fact the claimant did not understand he needed to call in every day, Mr. Duncan suspended the claimant effective January 23 through February 2, 2012, rather than terminate his employment or determine he voluntarily quit his job. He took the claimant's badge, as is the employer's policy during a suspension, and instructed him to report for light duty work February 3, 2012. Mr. Duncan told the claimant if he was unable to work at that time he must call in every day to report his absence. The claimant did not call or show up for work from February 3 through February 6, 2012, when he called the attendance line at 5:28 a.m. and left a message stating, "Thank you for everything. Adios." The employer sent the claimant certified letters February 7 and February 14, 2012, stating he had not worked since January 19, 2012, and had not provided any medical documentation excusing him from work during that time. The letters indicated the claimant needed to contact the employer within 72 hours of receipt of the letters, both of which

the claimant signed for, to discuss the matter but the claimant did not respond and the employer considered the claimant to have voluntarily quit his job. The claimant stated he did not return, even though he was released without restrictions and the employer still offered him light duty work, because the employer did not honor work-related restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without 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.

While the claimant maintains his employment was terminated the employer stated he voluntarily quit his job. The claimant was suspended and interpreted that as a termination even though the employer told him to report for work February 3, 2012, after the completion of the suspension, or call in to state he would be absent. The employer had continuing work available for the claimant and was willing to work with him regarding his attendance issues but the claimant simply stopped going to work or calling in to report his absences. Under these circumstances, the administrative law judge concludes the claimant voluntarily quit his job. The issue then becomes whether the claimant voluntarily left his job with good cause attributable to the employer. 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 § 96.6-2. The claimant was experiencing work-related elbow and shoulder pain and was excused from work January 11 to January 16, 2012, at which time he was released to return to work without restrictions. The claimant had a responsibility at that point to show up for work or call the employer to report his absences and failed to do either one. The employer treated his absences through February 2, 2012, as a suspension rather than a separation and attributed the claimant's no-call no-shows to a misunderstanding but despite the second chance the claimant still did not report for work or call in until February 6, 2012, when he called and thanked the employer for everything and said, "Adios." Although the claimant stated he did not want to return because he did not believe the employer honored light duty restrictions, the claimant was not placed on light duty by his physician after being excused from work for five days in January 2012. If the claimant had been on light duty restrictions and the employer did not comply with those restrictions, he might have been able to establish intolerable or detrimental working conditions. Because he was not on light duty but had received a full release to return to work, the administrative law judge must conclude the claimant voluntarily quit his job by failing to return to work after being excused by his doctor from January 11 to January 16, 2012, and has not established his leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

DECISION:

The March 1, 2012, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs