

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUEN, JODIE, R
Claimant

APPEAL NO. 11A-UI-00370-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

OC: 10/17/10
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 30, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 18, 2011. Claimant participated. Matt Chase represented the employer and presented additional testimony through Kendra Saunders.

ISSUE:

Whether the claimant separated from employment for a reason that would disqualify her from unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jodie Auen was employed by Tyson Retail Deli Meats as a full-time production worker from August 2009 and last performed work for the employer on September 30, 2010. Ms. Auen's father passed away on September 17, 2010. Thereafter Ms. Auen was approved for three days of bereavement time, but was absent two additional days that week for personal reasons. On Monday September 27, Ms. Auen was absent for medical reasons with the employer's approval. Ms. Auen had pink eye. Ms. Auen was absent two additional days for medical reasons and properly reported the absences. Ms. Auen returned to work on September 30. On October 1, Ms. Auen notified the employer of her need to be absent. Ms. Auen wanted to travel to get a birth certificate she needed to prove her relationship with her father and support her eligibility for the three days of bereavement leave. Later that day, Ms. Auen telephoned the human resources office and spoke with Kendra Saunders, Human Resourced Director. Ms. Auen wanted to know where she was with her accumulation of attendance points. Ms. Saunders told Ms. Auen that she had one more point left and to use it wisely. Ms. Auen concluded that meant that she had used that point up by being absent on October 1. Ms. Auen wondered whether she had been discharged from the employment. Ms. Saunders did not tell Ms. Auen she was discharged from the employment. Ms. Auen knew that it was the employer's practice to discharge employees in person. Ms. Auen assumed she had pointed out and would be discharged if she appeared for work the following day. Ms. Auen elected not to appear for shifts on October 4, 5, and 6. Ms. Auen did not contact the employer to indicate she would be absent

those days. After Ms. Auen failed to appear for three shifts, the employer concluded she had abandoned the employment and sent a letter indicating as much. Ms. Auen did not make further contact with the employer after October 1, 2010.

The employer's written policy deemed three days of consecutive no-call, no-show absences a voluntary quit. Ms. Auen was aware of the policy.

Ms. Auen appeared at the workplace on October 8, 2010 for the purpose of collecting her check and returning employer-issued materials.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

A worker who was absent three days without notifying the employer in violation of the employer's policy is presumed to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4).

The weight of the evidence establishes that Ms. Auen's separation from the employment was based on a voluntary quit, not a discharge from the employment. Ms. Auen knew she had not been discharged when she elected not to appear for shifts or contact the employer after October 1, 2010. The weight of the evidence fails to establish that Ms. Auen reasonably concluded she had been discharged in connection with the October 1, 2010 telephone call.

Ms. Auen voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Auen is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Ms. Auen.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development

determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's December 30, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs