

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NASHA D SHEPPARD
Claimant

APPEAL NO. 08A-UI-04391-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 03/23/08 R: 03
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Nasha Sheppard filed an appeal from a representative's decision dated April 16, 2008, reference 02, which denied benefits based on her separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on May 22, 2008. Ms. Sheppard participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Sheppard was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Sheppard began working for Tyson on July 10, 2007 and was employed full time in production. The employer tracks attendance on a point system. Ms. Sheppard was 1.5 hours late reporting to work on March 26 because she overslept. She was told she would receive three attendance points as a result. She obtained a printout of her points on March 27 and learned she had 13.5 points, not including the three she would receive for March 26.

Ms. Sheppard was scheduled to work from 4:30 p.m. on March 28 until 1:00 or 2:00 a.m. on March 29. She left work at approximately 9:45 p.m. on March 28 but did not advise her supervisor that she was leaving. She did not contact the human resources department to indicate that there was a problem that required her to leave work early. She was not told by anyone that she had been discharged as a result of her attendance. Ms. Sheppard believed she was going to be discharged on March 28 after she completed her shift. She felt the employer was "using" her by delaying the discharge until the end of the shift so that her services could be used during the shift. Therefore, she walked off the job before the end of the shift. She returned to the workplace on March 31 but well after her work shift started. She was not able to speak with anyone in management at that time because they were in meetings.

Ms. Sheppard had sustained a work-related injury while working for Tyson. She had been on light duty until March 17 when she was returned to her regular job. She felt the work she performed on March 26, 27, and 28 aggravated her prior injury. She did not request to be seen at the employer's on-site health services department on any of the three dates. Although there is a human resources representative on duty during her shift, Ms. Sheppard did not go to human resources to indicate that there was a problem with the duties she was performing. Ms. Sheppard did not indicate in her fact-finding statement to Workforce Development that her early departure on March 28 was due to her injury or any other medical problem.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes from all of the evidence that Ms. Sheppard initiated her separation from Tyson when she walked off the job on March 28 without notice or authorization. The employer may well have determined at some point that she had exceeded her allowable attendance points and would be discharged. However, no such determination had been made when she walked off the job on March 28. By walking off the job, Ms. Sheppard preempted any discharge decision by the employer. The employer may well have decided to give her another opportunity to salvage her employment.

Based on the foregoing, the administrative law judge concludes that Ms. Sheppard voluntarily quit her employment because she anticipated she was going to be discharged. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Sheppard contended during the hearing that she left on March 28 because the work aggravated her prior injury. The administrative law judge did not find this contention credible. Ms. Sheppard did not tell either her supervisor or human resources that she was leaving due to pain or problems associated with her injury. She did not ask to be seen in health services to obtain relief from any pain she was experiencing. Lastly, she made no mention of health issues when she initially gave her statement to Workforce Development.

Even if the administrative law judge were to conclude that Ms. Sheppard was experiencing pain on March 28 as a result of her work, she acknowledged that she did not put the employer on notice of her intent to quit. An individual who leaves employment because of medical problems caused or aggravated by the employment must first advise the employer of the problem and notify the employer that she intends to quit if the problem is not resolved or if her condition is not accommodated. See Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). If Ms. Sheppard had gone to health services, the employer may have decided to return her to light-duty work, the same as she had been performing until March 17. Since there was no notice of intent to quit in Ms. Sheppard's case, the medical issue would not constitute good cause attributable to the employer for quitting.

After considering all of the evidence, the administrative law judge concludes that Ms. Sheppard's quit was not for good cause attributable to the employer. As such, benefits are denied.

DECISION:

The representative's decision dated April 16, 2008, reference 02, is hereby affirmed. Ms. Sheppard quit her employment with Tyson for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured

work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

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