

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FARHIYO A ABDI
Claimant

APPEAL NO. 12A-UI-00301-W

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 10/10/10
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Farhiyo Abdi appealed an unemployment insurance decision dated January 4, 2012, reference 01, that concluded that she had quit her employment with Tyson and failed to establish good cause attributable to the employer. An in-person hearing was held on February 7, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Ibrahim Abukar participated as the interpreter of the Somali language. Susan Pfeifer, Complex Human Resources Manager, participated in the hearing on behalf of the employer Tyson.

ISSUES:

The initial issue is whether the claimant was quit or the employer initiated the separation.

If the claimant quit, the issue is whether she quit with good cause attributable to the employer.

If the claimant was discharged, the issue is whether there is any other reason to disqualify.

The final issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Farhiyo Abdi was employed by Tyson as a full-time laborer from April 9, 2007 until July 2011. Ms. Abdi had a baby on April 25, 2011. She was granted maternity leave for a period of time. She exceeded the time allowed. She was willing to return to work on or about July 3, 2011, but no work was available for her on the second shift (B shift). Prior to the birth of her child she had worked first shift. She had no intent to quit.

REASONING AND CONCLUSIONS OF LAW:

The initial question raised in this case is the nature of the separation. Separations are categorized into four separate categories under Iowa law.

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

See Iowa Administrative Code 871—24.1.

The fact finder viewed this matter as a quit and applied the good cause standard set forth for non-work-related injuries. Iowa Code section 96.5(1)(d) (2011). The employer alleged that the claimant quit but provided no first hand testimony to this effect. Susan Pfeifer participated on behalf of the employer. She had never spoken to the claimant. She did not present a resignation letter. The claimant testified that she did not quit and had no intention to quit. The claimant is found to be credible. As such, this matter is viewed as a termination.

Further guidance is provided by Iowa Administrative Code 871—24.22(2).

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee—individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the individual, the individual is considered laid off and eligible for benefits.

(2) If the employee—individual fails to return at the end of the leave of absence and subsequently become unemployed the individual is considered having voluntarily quit and is therefore ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Iowa Administrative Code 871—24.22(2).

In this case, there was a mutually agreed upon leave of absence, at least initially. The claimant exhausted her family leave and was expected to return to work. The employer acknowledged that she attempted to return to work on a different shift.

The final issue which must be determined is whether Ms. Abdi was able and available for work and, if so, when she became able and available for work. In the present case, the real issue is availability not ability.

24.23(16) Availability Disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Iowa Administrative Code 871—24.23(10).

Ms. Abdi was not available for work from April 8, 2011 through July 3, 2011. She testified credibly that she became available for work on July 3, 2011.

Ms. Abdi became able to work in gainful, full-time employment which is generally available in the labor market on or about July 3, 2011 and should be considered able and available to work from that date forward.

DECISION:

The unemployment insurance decision dated January 4, 2012, reference 01, is reversed. The claimant is entitled to receive benefits commencing on her effective claim date if otherwise eligible.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/css