

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSE A TOLLINCHI Claimant WEST LIBERTY FOODS LLC Employer	68-0157 (9-06) - 3091078 - EI APPEAL NO. 17A-UI-03272-JTT ADMINISTRATIVE LAW JUDGE DECISION OC: 02/19/17 Claimant: Appellant (5)
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Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jose Tollinchi filed a timely appeal from the March 14, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Tollinchi was discharged on February 17, 2017 for excessive unexcused absences. After due notice was issued, a hearing was held on April 18, 2017. Mr. Tollinchi participated. Rosa Frausto represented the employer and presented additional testimony through Socorro Zamudio. Spanish-English interpreters Omar Nina and Luis Ruiz of CTS Language Link assisted with the hearing.

ISSUE:

Whether Mr. Tollinchi separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jose Tollinchi was employed by West Liberty Foods, L.L.C. as a full-time poultry production worker from February 2016 and last performed work for the employer on February 15, 2017. Mr. Tollinchi's immediate supervisors were Production Supervisors Socorro Zamudio and Dave Meincke. Mr. Tollinchi's shift started at 7:32 a.m. and ended whenever production was done for the day. Mr. Tollinchi's work days were Monday through Friday, with occasional weekend shifts.

On February 15, 2017, Mr. Tollinchi spoke to Mr. Zamudio about his lack of transportation for the following day, February 16. Mr. Tollinchi lived in Coralville and carpooled with another employee to the workplace in West Liberty. There was no agreement between the employer and Mr. Tollinchi for the employer to provide transportation for Mr. Tollinchi. When Mr. Tollinchi spoke with Mr. Zamudio on February 15, Mr. Zamudio reminded Mr. Tollinchi that Mr. Tollinchi had 7.5 attendance points. Mr. Tollinchi was well aware that he was at 7.5 attendance points and that eight attendance points would subject him to possible discharge from the employment. Mr. Zamudio did not have authority to discharge Mr. Tollinchi from the employment and did not tell Mr. Tollinchi on February 15 that Mr. Tollinchi was discharged from the employment. The decision and discretion to discharge an employee for attendance rested with the employer's human resources staff. Under the established protocol, before an employee was discharged from attendance, a human resources representative would meet with the employee to review the employee's attendance history. The human resources department would then decide whether to forward with discharging the employee. On February 16, 2017, Mr. Tollinchi was absent due to a lack of transportation and properly notified the human resources department at

7:40 a.m. that morning. On February 17, 2017, Mr. Tollinchi went to the workplace and returned his employer-issued equipment so that he would not be billed for the equipment. As of that time, the employer had given no notice to Mr. Tollinchi that he was discharged from the employment.

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.

The weight of the evidence in the record establishes that Mr. Tollinchi voluntarily quit on February 17, 2017 by delivering his employer-issued equipment to the employer and separating from the employment. Mr. Tollinchi quit the employment in anticipation of being discharged for attendance. However, the employer had made no decision to discharge him from the employment and had not notified him that he was discharged from the employment. The voluntary quit in anticipation of disciplinary action was without good cause attributable to the employer. Mr. Tollinchi's assertion that he was discharged on February 15, 2017 is contradicted by his notice to the employer on February 16, 2017 that he would be absent due to a lack of transportation. If Mr. Tollinchi had been discharged on February 15, 2017, there would be no reasonable basis for him to contact the employer on February 16 to report the absence. Mr. Tollinchi is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Tollinchi must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The March 14, 2017, reference 01, decision is modified as follows. The claimant voluntarily quit the employment on February 17, 2017 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs