

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUN ANYUON
Claimant

APPEAL NO: 06O-UI-09165-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/11/06 R: 02
Claimant: Respondent (1)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's July 7, 2006 decision (reference 02) that concluded Run Anyuon (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 27, 2006. The claimant participated in the hearing. Tom Barragan appeared on the employer's behalf. Robert Talang served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on July 26, 2004. He worked full-time as a production worker in the employer's Perry, Iowa, pork slaughter and processing facility. His last day of work was April 29, 2005. He was on a leave of absence for medical reasons after that date.

The employer has record of several extensions to the claimant's leave of absence from the claimant's doctor. However, at least the human resources department did not have record of any extensions to the leave of absence after an extension through September 21, 2005. When the claimant did not seek to report for work for five days thereafter, it considered the claimant to have voluntarily quit.

The claimant asserted that his doctor's office had provided additional extensions to the employer. He was not able to return to work as of September 21, 2005, as he had a third heart operation in October 2005. His doctor did subsequently release him to return to work in November 2005. On the date the doctor had indicated he could return to work, the claimant went to the employer's facility and sought to return to work. However, he was told that he was no longer employed, and his identification badge was taken from him. He returned to his doctor to get another note indicating he was released to return to work at that time, which he took to the employer the next day and again sought to return to work. He was again turned away and

told he no longer had a job. The specific day in November 2005 is not known; it is deemed to be effective the week beginning November 27, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

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 employee-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 becomes unemployed the individual is considered as having voluntarily quit and therefore is 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 Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. 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. The employer

has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

Even accepting the employer's contention that the claimant did not extend the leave of absence and therefore quit by not returning to work by the end of the leave of absence, the quit was for medical reasons from which the claimant subsequently recovered and sought to return to work. A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). The claimant has been released to return to full work duties; he did seek to return to work with the employer, but his position was not available to him. Accordingly, the separation is with good cause attributable to the employer and benefits are allowed as of November 27, 2005, if the claimant is otherwise eligible.

DECISION:

The representative's July 7, 2006 decision (reference 02) is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer when the employer failed to allow him to return to work upon his recovery. Benefits are allowed as of November 27, 2005, if the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/cs