

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY C MUK
Claimant

APPEAL NO. 09A-UI-18590-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**Original Claim: 10/04/09
Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated November 25, 2009, reference 01, which held that no disqualification would be imposed regarding Mary Muk's separation from employment. After due notice was issued, a hearing was held by telephone on April 12, 2010. The employer participated by Terry Carmichael, Training Coordinator. Ms. Muk responded to the notice of hearing and two attempts were made to contact her at the number provided. A machine answered on both occasions.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Muk began working for Tyson on November 1, 2008 as a full-time production worker. She was presumed to have quit after she was absent for five consecutive shifts, September 14 through September 18, without notice. The employer did not hear from her after September 18, either. Continued work would have been available if Ms. Muk had continued reporting or had notified Tyson of her intentions.

Ms. Muk filed a claim for job insurance benefits effective October 4, 2009 and received a total of \$4,825.00 on the claim. She filed a claim for emergency unemployment benefits effective January 24, 2010 and has received a total of \$2,790.00 on the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Ms. Muk abandoned her job when she stopped reporting for available work without notice to the employer. Therefore, her separation is a voluntary quit. An individual who leaves employment voluntarily 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. Muk did not participate in the hearing to explain why she stopped reporting for work at Tyson. The evidence of record does not establish any good cause attributable to the employer for the separation. As such, benefits are denied.

Ms. Muk has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated November 25, 2009, reference 01, is hereby reversed. Ms. Muk quit her employment with Tyson for no good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Muk will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw