

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FIRAS D AL SARHAN
Claimant

APPEAL NO. 13A-UI-12708-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08/11/13
Claimant: Appellant (5)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Firas Al Sarhan filed a timely appeal from the November 12, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 5, 2013. Mr. Al Sarhan participated. Eloisa Baumgartner represented the employer and provided additional testimony through Brian Jackson. Arabic-English interpreter Magdy Salama assisted with the hearing.

ISSUE:

Whether Mr. Al Sarhan separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Firas Al Sarhan was employed by Tyson Fresh Meats, Inc., from 2008 until August 5, 2013, when he voluntarily quit by refusing to perform assigned duties. Prior to May 6, 2013, Mr. Al Sarhan had been a full-time employee. In April 2013, Mr. Al Sarhan asked the employer to allow him to go to part-time status so that he could go to school and have more time off to rest. Mr. Al Sarhan made no mention of his hands or fingers hurting in connection with his discussion with the employer about going part time. In 2012, Mr. Al Sarhan had complained about his hands hurting and the employer has facilitated appropriate medical evaluation and attention to that issue. Mr. Al Sarhan did not mention anything again about his hands or fingers hurting until a conversation with the personnel manager on October 9, 2013.

The employer agreed to the requested change to part-time status, which went into effective on May 6, 2013. As a part-time employee, Mr. Al Sarhan worked 24 hours per week. As a part-time employee, Mr. Al Sarhan did not “own” a particular job in the employer’s plant. Instead, Mr. Al Sarhan was assigned to work in several different areas of production as needed. Mr. Sarhan continued to work in this capacity until August 5, 2013.

Mr. Al Sarhan had a couple of area where he preferred to work. On August 5, 2013, Mr. Al Sarhan assigned Mr. Sarhan to work in an area that was not one of the two preferred

areas and Mr. Sarhan refused to perform the work. The supervisor alerted Brian Jackson, Kill Floor General Foreman, to the situation and Mr. Jackson met with Mr. Al Sarhan that same day. Mr. Al Sarhan reiterated that he now only willing to work in two areas. Mr. Jackson explained that the employer did not currently need assistance from part-time employees in those two areas and that the employer was not going to pull full-time, "job-owning" workers from their positions in those areas to give Mr. Al Sarhan his preferred work. When Mr. Al Sarhan persisted in refusing to perform assigned duties that he had previously performed as a part-time employee, Mr. Jackson told Mr. Al Sarhan that he could go home and that the employer would contact him if the employer needed help in those areas. Mr. Al Sarhan went home. The employer did not call.

In early October 2013, the employer sent a letter to Mr. Al Sarhan indicating that Mr. Al Sarhan had been off work since August 5, 2013 and needed to contact the employer no later than October 14, 2013 to discuss being returned to the work schedule. Mr. Al Sarhan got the letter on October 9, 2013 and reported to the workplace that day to speak with the personnel manager. Mr. Al Sarhan told the personnel manager that he was not interested in returning to work unless the employer paid him wages for the two months he had been off work. The personnel manager told Mr. Al Sarhan that as a part-time employee he was only due wages for the work he actually performed. Mr. Al Sarhan then referenced his August 5, 2013 discussion with Mr. Jackson and the personnel manager responded that the basis for that earlier discussion had been Mr. Al Sarhan's refusal to perform assigned work. At that time, Mr. Al Sarhan asserted that he had gone to Mr. Jackson to complain of pain in his hands, but that Mr. Jackson had denied him access to the employer's nurses because Mr. Al Sarhan lacked insurance. The personnel manager told Mr. Al Sarhan that the employer would be responsible for addressing any work-related injuries, regardless of whether Mr. Al Sarhan was full time or part time. The personnel manager again asked Mr. Al Sarhan whether he was willing to return to work and Mr. Al Sarhan said he was not. The employer told Mr. Al Sarhan that the employment would be terminated if he did not return to work. Mr. Al Sarhan continued to refuse to return to work. The personnel manager asked Mr. Al Sarhan to participate in an exit interview. Mr. Al Sarhan refused and left.

Mr. Al Sarhan is a native Arabic speaker, but has some functional English ability. The employer utilized an Arabic-English interpreter during its discussions with Mr. Al Sarhan.

This employer was Mr. Al Sarhan's sole base period employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The evidence in the record indicates that Mr. Al Sarhan voluntarily quit the employment without good cause attributable to the employer on August 5, 2013, when Mr. Al Sarhan refused to perform work as assigned. Mr. Al Sarhan confirmed his voluntary quit without good cause attributable to the employer on October 9, 2013, when he again refused to return to work. The quit was not based on any medical issue and was not upon the advice of a doctor. The quit was not based on any intolerable or detrimental working condition. The quit was instead based solely on Mr. Al Sarhan's decision to refuse to perform work that he had been performing for months and his insistence that the employer assign him to work only in his two preferred areas.

Because Mr. Al Sarhan's voluntarily quit was without good cause attributable to the employer, Mr. Al Sarhan 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. Al Sarhan would have to meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The Agency representatives November 12, 2013, reference 02, decision is modified only to reflect that there was no medical basis for the separation. The claimant voluntarily quit the employment 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, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css