

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLEN R MARTINEZ
Claimant

APPEAL NO. 11A-UI-05012-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03-20-11
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 12, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 11, 2011. The claimant did participate along with her witness Nydia Erosa. The employer did participate through (representative) John Carreras, Human Resources Manager and Terry Schultz, Plant Superintendent. Employer's Exhibit One was entered and received into the record.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a general production worker full time beginning December 21, 2009 through March 21, 2011 when she voluntarily quit. When the claimant was hired she was told about the employer's policy regarding removing jewelry including piercings when she worked. The claimant had been taken to the office much earlier in her career when she had a piercing in her cheek. She was told at that time that the implant had to be removed or she would not be allowed to continue working.

On March 21 the claimant returned to work with a new piercing above her left eye lid. She was seen by Mr. Schultz who was walking the floor of the plant. He took her to the personnel office and she was told that she had to remove the piercing while working pursuant to the employer's rules and policies. The claimant knew the policies but chose to get the piercing anyway. The employer did not enforce the no piercing or no jewelry policy differently if the employee was Hispanic. The claimant said she would not remove the piercing and was told she was suspended indefinitely until she did remove it because she could not have it while she worked on the kill floor. The claimant then told both Mr. Carreras and Mr. Schultz that she would rather keep her piercing and she voluntarily quit.

The claimant did not quit because of any safety violations in the plant. She is alleging safety violations that allegedly occurred much earlier in the year in an attempt to obtain unemployment insurance benefits. The employer has enforced the policy for all employees who have piercings. On prior occasions the claimant refused to provide names of employees who were allegedly wearing piercings while working so the employer could investigate.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

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.

871 IAC 24.25(28) 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 § 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 § 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:

(28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant knew the employer's policy regarding jewelry and piercings and chose not to comply with it. When she was suspended for her failure to comply with the policy, she quit. The employer did not treat the claimant any differently than any other employee. While claimant's decision to quit may have been based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The April 12, 2011 (reference 01) decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs