

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES NYOACH

Claimant

APPEAL NO: 100-UI-11172-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 04/11/10

Claimant: Appellant (5)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

James Nyoach (claimant) appealed an unemployment insurance decision dated May 6, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Tyson Fresh Meats, Inc. (employer) for work-related misconduct. An initial hearing in this matter was scheduled to be heard by Administrative Law Judge Timberland on June 22, 2010 in Appeal Number 10A-UI-07092-JT. The appellant failed to participate and a decision was issued on the record which upheld the original disqualification. The claimant appealed the decision indicating he did not participate due to lack of notice. The Employment Appeal Board remanded for a new hearing in an order dated August 6, 2010. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 29, 2010. The claimant participated in the hearing with his deaf case manager Amy Riemer. Renee Johnson of Employee and Family Resources participated as the sign language interpreter. The employer participated through Eloisa Baumgartner, Employment Manager. 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.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production employee from January 25, 2005 through September 15, 2009. The employer's attendance policy provides that an employee is considered a voluntary quit if he is a no-call/no-show for five consecutive workdays. The claimant was a no-call/no-show for five days ending on September 14, 2009 and was considered to have voluntarily quit his employment.

The claimant admitted he was a no-call/no-show for five days. He had previously requested time off to go visit schools and universities. His boss Gary took him to see Gary's boss

regarding the time off work. The employer told the claimant if he was attending school, he needed to provide documentation showing that. The claimant was not attending school so was unable to provide any documentation. He knew that the time-off had not been approved but took it anyway.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to call or return to work after September 14, 2009.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was deemed a voluntary quit on September 15, 2009 after five days of no-call/no-show. It is his burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant failed to establish that he quit with good cause attributable to the employer. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated May 6, 2010, reference 01, is modified with no effect. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css