

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANTRICE A JORDAN**  
Claimant

**APPEAL NO. 12A-UI-00671-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 12/18/11**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 12, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 14, 2012. Claimant Shantrice Jordan participated. Jim Hook, Human Resources Manager, represented the employer. Exhibits One was received into evidence.

**ISSUE:**

Whether Ms. Jordan separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Shantrice Jordan was employed by Tyson Fresh Meats as a full-time production worker from March 2011 and last performed work for the employer on December 8, 2011. Ms. Jordan was then absent without notifying the employer on December 9, 12, 13, 14, 15, 16 and 19, 2011. Under the employer's written attendance policy, Ms. Jordan was required to notify the employer at least 30 minutes prior to her shift if she needed to be absent. Ms. Jordan was aware of the policy. There was a collective bargaining agreement that governed Ms. Jordan's employment. Under the collective bargaining agreement, an employee who was absent for five days without notifying the employer was deemed to have voluntarily quit. After five consecutive no-call/no-show absences, the employer concluded that Ms. Jordan had voluntarily separated from the employment. Ms. Jordan did not make any further contact with employer after she worked her shift on December 8, 2011.

**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.

A worker who is absent three days without notifying the employer is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(4).

Ms. Jordan's testimony at the hearing was in large part fabricated. Ms. Jordan's responses to the administrative law judge's questions indicated, in tone and substance, a marked lack of commitment to the veracity of those responses. The weight of the evidence establishes that Ms. Jordan was absent for personal reasons after she worked her shift on December 8, mainly because she simply did not feel like working, and that she did not contact the employer with regard to any of the absences. The weight of the evidence indicates that the employer accurately documented her attendance or lack of the same. Ms. Jordan was a no-call/no-show for five consecutive days before the employer deemed her to have voluntarily quit under the collective bargaining agreement. The evidence indicates that Ms. Jordan voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Jordan is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Jordan.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

The evidence also calls into question whether Ms. Jordan has been available for work since she established her claim for benefits. This matter will be remanded to the Claims Division for investigation into and determination of that issue.

**DECISION:**

The Agency representative's January 12, 2012, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits. The Claims Division should also determine whether the claimant has been available for work since she established her claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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