

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

STEVO BIJELIC
1154 LANGLEY RD APT 1
WATERLOO IA 50702-4234

TYSON FRESH MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-01329-RT
OC: 01-08-06 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Tyson Fresh Meats, Inc., filed a timely appeal from an unemployment insurance decision dated January 25, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Stevo Bijelic. After due notice was issued, a telephone hearing was held on February 21, 2006, with the claimant participating. The claimant was assisted by an interpreter, Zijo Suceska. Randy Schultz, Assistant Human Resources Manager, participated in the hearing for the employer. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a production employee from November 6, 2001 until he voluntarily quit on December 30, 2005. On that day the claimant went into the office of his supervisor and informed him that he was quitting and completed an exit interview as shown at Employer's Exhibit One. The claimant was assisted by an interpreter when he completed the exit interview. The claimant also told the union representative on December 30, 2005, that he was quitting. The claimant had also talked to the union representative on prior occasions. The claimant quit because a fan was strongly blowing on him in a refrigerated area, which made him very cold and endangered his health and life. The fan was approximately two yards behind the claimant and four yards above him. It blew directly on him. The fan had once had a shield on it which prevented the fan from blowing directly on the claimant but still cooled the area and the meat in the area. However, the shield was removed. This situation started about two years ago and the claimant endured it. However, approximately two weeks before the claimant went on vacation on December 9, 2005, the fan blew stronger and blew directly on the claimant. When the claimant returned after vacation the fan was still blowing strong and directly on the claimant. He could not tolerate the cold anymore and had to quit. The claimant did work in a refrigerated area which was cool, but not in a freezer area. The meat was already frozen. The shield on the fan would still have permitted the cooling in the area.

The claimant expressed concerns to his supervisor, Jorge Martinez, four or five times. At first Mr. Martinez told the claimant that he would talk to the mechanics or to others. However, nothing was done, and when the claimant continued to express concerns, Mr. Martinez would refuse to talk to the claimant about it. On the day the claimant left, he spoke to a substitute supervisor, Ben Johnson, but again no relief was given to the claimant and the claimant quit. The claimant could have tolerated the fan had the shield been left on so that the fan did not blow directly on the claimant. Pursuant to his claim for unemployment insurance benefits filed effective January 8, 2006, the claimant has received unemployment insurance benefits in the amount of \$1,536.00 as follows: \$256.00 per week for six weeks from benefit week ending January 14, 2006 to benefit week ending February 18, 2006.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not.

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.

871 IAC 24.26(2), (3), (4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

The parties agree, and the administrative law judge concludes, that the claimant left his employment voluntarily on December 30, 2005. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The only reason given by the claimant for his quit was that a fan in a refrigerated area blew directly on him. This fan was approximately two yards behind the claimant and four yards above him. The claimant credibly testified that the fan blew directly on him, making him very cold and endangering his health and life. The claimant also credibly testified that there had been a shield on the fan which redirected the air from blowing directly on the claimant but that it had been removed. The claimant did work in a refrigerated area, but the shield would not have prevented the cooling of the area and would have protected the claimant but it was removed. The claimant tolerated this condition for approximately two years, but right before he went on vacation on December 9, 2005, the fan blew stronger and made the claimant colder. When he returned from vacation the situation persisted and the claimant quit. The claimant had expressed concerns four or five times to his supervisor, Jorge Martinez, and right before his quit to another supervisor, Ben Johnson. However, the situation was never corrected. The employer's witness had no explanation as to why the shield was removed and not returned or why the fan was allowed to blow directly on the claimant. The administrative law judge understands that this was a refrigerated area and, even though not a frozen area, the area needed to be kept cool for the meat processing. However, the administrative law judge cannot understand why such a fan would be allowed to blow directly on the claimant after numerous complaints and given the fact that the area was already cold and why the fan could not either be redirected or the shield placed back on the fan to protect the claimant from the cold. The administrative law judge is a bit concerned that the claimant worked in that area for two years, but the claimant testified that the fan blew stronger and he was colder in the two or three weeks immediately before his quit. The claimant did express sufficient concerns to the employer to apprise the employer of his concerns and allow the employer an opportunity to address his concerns but the employer did not.

On the record here, the administrative law judge is constrained to conclude that the employer's failure to address the claimant's concerns about the fan blowing directly on him without a shield made the claimant's working conditions intolerable and detrimental and perhaps unsafe and unlawful. Therefore, the claimant's quit because of that reason was with good cause attributable to the employer. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on December 30, 2005, with good cause attributable to the employer and, as a consequence, he is not disqualified to receive unemployment insurance

benefits. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,536.00 since separating from the employer herein on December 30, 2005, and filing for such benefits effective January 8, 2006. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of January 25, 2006, reference 01, is affirmed. The claimant, Stevo Bijelic, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he left his employment voluntarily with good cause attributable to the employer. As a result of this decision the claimant is not overpaid any unemployment insurance benefits arising out of his separation from the employer herein.

kkf/kjw