

**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**

**NILA A ACEVEDO  
1003 LUCINDA ST #1  
PERRY IA 50220**

**TYSON FRESH MEATS INC  
% TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-03710-CT  
OC: 02/29/04 R: 02  
Claimant: Respondent (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated March 25, 2004, reference 01, which held that no disqualification would be imposed regarding Nila Acevedo's separation from employment. After due notice was issued, a hearing was held by telephone on April 29, 2004. Ms. Acevedo participated personally. The employer participated by Tom Barragan, Employment Manager. Guadalupe McCarney participated as the interpreter.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Acevedo began working for Tyson as a full-time production worker on June 17, 2002. On or about January 8, 2004, she requested and was granted a leave of absence for one month. The form she completed specified she was to return to work on February 9. Although she returned to Iowa on February 8, she did not report for work or contact the employer on February 9 or at any point thereafter. She was processed as a voluntary quit on February 13, 2004. Continued work would have been available if Ms. Acevedo had returned to work on February 9 or notified the employer of her intent to be absent.

The reason Ms. Acevedo listed on her request for the leave of absence was "family problems." She had been notified in late December that her husband had died on October 23, 2003. He died in a traffic accident in Kansas and was buried in Kansas. When Ms. Acevedo left Iowa in January, she went to California and remained there until her return to Iowa on February 8. Although she indicated she was attending to legal matters in California, she did not have an attorney in California. She does have relatives in California. She did not go to Kansas until after she had returned to Iowa on February 8.

Ms. Acevedo has received a total of \$1,736.00 in job insurance benefits since filing her claim effective February 29, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Acevedo was separated from employment for any disqualifying reason. She abandoned her job when she failed to return to work from a leave of absence. Therefore, the separation is considered a voluntary quit. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code Section 96.5(1). Ms. Acevedo failed to establish that her failure to return to work was due to some problem associated with her employment with Tyson. She indicated she did not return to work because she felt Tyson was going to humiliate her because she was unable to provide proof as to the reason she had needed the leave of absence. She knew when the leave was granted that the employer wanted her to return to work with proof that her absence was due to her husband's death. The employer's request for such documentation was not good cause for quitting.

It appears that the true reason Ms. Acevedo did not return to work on February 9 was because she was unable to provide verification that her leave was related to her husband's death. She testified that she left work in January because she needed to go to where her husband had been buried. However, she left Iowa and went to California for a month. Her husband was buried in Kansas but, she did not go to Kansas until well after her leave of absence had expired. Moreover, she did not request the leave of absence until approximately two weeks after she was notified of the husband's death. It appears that the true reason for the leave was to visit with relatives in California and not for any reason related to her husband's death.

After considering all of the evidence, the administrative law judge concludes that Ms. Acevedo's quit was not for good cause attributable to the employer. Accordingly, benefits are denied. Ms. Acevedo has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code Section 96.3(7).

DECISION:

The representative's decision dated March 25, 2004, reference 01, is hereby reversed. Ms. Acevedo voluntarily quit her employment for no 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Acevedo has been overpaid \$1,736.00 in job insurance benefits.

cfc/kjf