

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP E PARKER
Claimant

APPEAL NO. 100-UI-10199-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 02/14/10
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 17, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 2, 2010, pursuant to a remand order of the Employment Appeal Board. Claimant participated. Employer participated by Kris Travis, Employment Manager.

ISSUE:

The issues in this matter are whether claimant quit for good cause attributable to the employer and whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on February 11, 2010. Claimant was suspended for three days. Claimant was to return to work Monday, February 15, 2010. Claimant returned to work and had to wait for two hours. Claimant left without resolution of the issue. Claimant left his telephone number. Employer called the number and left a message that claimant needed to come back by 4:00 pm. Claimant did not receive the message. Claimant then called two days later, Wednesday, February 17, 2010, and was told they would get back to him. Claimant then came in a week after the last Monday visit and was told he was let go for job abandonment by five no-call absences. Employer's policy deems five no-call absences a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship after missing five days in a row. Claimant was given mixed messages by company personnel with respect to his return to work. Claimant did come to work on a Monday, then called in on a Wednesday, then came back in on the next Monday. Based on the confusion

over when claimant was to come to work, it appears that claimant did make a good-faith effort to keep his job. The finding of five no-call absences appears inaccurate, as claimant called in on a Wednesday between the two visits. Claimant would have only four no-call absences. Even that conclusion is strained, as claimant did not receive the voice mail message that he was to come back in by 4:00 pm. This is a quit for cause attributable to employer. Benefits allowed.

DECISION:

The decision of the representative dated March 17, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. This matter is remanded to claims section for determination of overpayment.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw