

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER N CLARK
Claimant

APPEAL NO. 12A-UI-03904-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 02/26/12
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 2, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 30, 2012. Claimant Tyler Clark did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Jim Hook, human resources manager, represented the employer.

ISSUE:

Whether Mr. Clark separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tyler Clark was employed by Tyson Fresh Meats, Inc., as a full-time, first-shift, load-out worker from January 2011 and last performed work for the employer on February 26, 2012. Mr. Clark's immediate supervisor was Floyd Griffor, supervisor of materials handling.

On February 27, 2012, Jim Hook, human resources supervisor, met with Mr. Clark and suspended him for attendance. Mr. Hook directed Mr. Clark to appear for a meeting the next day at 8:00 a.m. to hear the employer's decision regarding whether he would be allowed to continue in the employment. Mr. Clark did not appear for the meeting or make further contact with the employer until March 13, 2011. After the employer did not hear from Mr. Clark on February 28, February 29, March 1, and March 2, the employer had documented a voluntary separation based on a failure to report.

On March 13, Mr. Clark went to the production plant and completed an exit interview document. The exit interview document indicates a voluntary separation for personal health reasons. The employer's established policies required that Mr. Clark clean out his locker and return employer equipment to the employer to avoid being charged for equipment. The employer believes this is what motivated Mr. Clark to return on March 13.

In making the decision to suspend Mr. Clark, the employer considered several absences dating back to May 19, 2011. Mr. Clark has been absent due to illness properly reported to the employer on May 19, and 20; June 21; August 18, 25, and 26; October 7; December 16; February 20; and February 21. On February 15, Mr. Clark left work early with notice to the supervisor. The employer representative does not know why Mr. Clark left work early on that date.

The employer had issued reprimands to Mr. Clark for attendance in August and October 2011.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The weight of the evidence indicates a voluntary quit *in anticipation* of a reprimand or possible discharge. The employer did not discharge Mr. Clark on February 27. Rather, the employer suspended Mr. Clark *for one day* with the instruction to return the next morning to further discuss his employment status. Mr. Clark elected not to appear for the meeting to see whether he would be allowed return to the employment and elected instead to permanently separate from the employment. The employer waited four days to hear from Mr. Clark before documenting a voluntary separation from the employment. Mr. Clark returned about two weeks after the one-day suspension and completed paperwork indicating a voluntary separation due to personal illness.

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.

When a worker separates from employment in response to a reprimand, the separation is presumed to be a voluntary quit without good cause attributable to the employer. See 871 IAC 24.25(28).

The weight of the evidence indicates that Mr. Clark voluntarily quit the employment without good cause attributable to the employer in response to a reprimand and *in anticipation* that he *might* be discharged from the employment. There is no evidence in the record to support the notion that Mr. Clark separated from the employment upon the advice of a licensed physician based on a medical issue that prevented him from continuing in the employment. Mr. Clark is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Clark.

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.

DECISION:

The Agency representative's April 2, 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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw