

**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**

**RUACH C JACK
2404 LILLIAN ST #4
BELLEVUE NE 68147**

**TYSON FRESH MEATS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283**

**Appeal Number: 04A-UI-12348-DWT
OC: 10/17/04 R: 01
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, 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 are 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 Quit
Section 96.3-7 – Recovery of Overpayment of Wages

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's November 2, 2004 decision (reference 01) that concluded Ruach C. Jack (reference 01) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 10, 2004. The claimant participated in the hearing. Susan Pfeifer, the human resource manager, and Jack Liford, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 27, 2003. The claimant worked as a full-time employee. Prior to his separation, the claimant recorded pump weights. His most recent supervisor was Vickie Gubalke.

In late September or early October 2004, the employer noticed a problem - a gain in cut loss. After reviewing the processes, the employer discovered problems in recording the weights at the pumps. During the investigation, the claimant's supervisor watched the claimant while he was working. Gubalke observed the claimant bypass some procedural steps the employer had established. On October 14, when Gubalke asked the claimant the steps he used when doing this job, the claimant kept telling her he was doing his job the way he had always done it. When the claimant would not tell Gubalke the step-by-step procedure he followed, she contacted Liford. Liford and Gubalke both talked to the claimant. He denied doing anything wrong. The claimant would not tell the employer the step-by-step procedure he used to do his work. When the employer concluded everyone was frustrated and the claimant was not cooperating, the employer asked the claimant to go home early. The employer asked the claimant to come back the next day.

The claimant reported to work on October 15, the next day. Liford and Pfeifer talked to the claimant and again asked him what specific steps he took when he performed his job. After a while, the claimant became very frustrated. The claimant told the employer he was quitting. Even though the employer asked the claimant to reconsider and continue his employment, the claimant did not.

The claimant established a claim for unemployment insurance benefits during the week of October 17, 2004. He filed claims for the weeks ending October 23 through December 4, 2004. The claimant received his maximum weekly benefit amount of \$269.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a.

This case revolves around a credibility issue because the claimant testified that the employer discharged him and the employer testified that the claimant quit. Both witnesses for the employer presented detailed information about the meetings held with the claimant. The claimant was vague and tried to evade answering the questions. Based primarily on these observations, the employer's testimony is deemed more credible than the claimant's testimony. Therefore, the findings of fact reflect the employer's version of events.

The facts establish the employer was in the process of investigating a problem with the pump when the claimant became frustrated and quit. When the claimant quit, the employer had not completed its investigation and had not decided to end the claimant's employment. The fact the employer asked the claimant to reconsider quitting further supports the conclusion that the

employer did not discharge him. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The evidence indicates the claimant became frustrated during the employer's questioning and decided to quit because the employer would not stop asking him to explain what steps he used when performing his job. The claimant may have had compelling personal reasons for quitting. The employer, however, had the right to investigate and ask the claimant questions especially after his supervisor observed the claimant when he was not following the correct procedure. The evidence does not establish that the claimant quit his employment for reasons that qualify him to receive unemployment insurance benefits. Therefore, as of October 17, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending October 23 through December 4, 2004. The claimant has been overpaid a total of \$1,883.00 in benefits he received for these weeks.

DECISION:

The representative's November 2, 2004 decision (reference 01) is reversed. The employer did not discharge the claimant. Instead, the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of October 17, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending October 23 through December 4, 2004. The claimant has been overpaid a total of \$1,883.00 in benefits.

dlw/pjs