

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTORIA K CONRAD
Claimant

APPEAL NO: 09A-UI-06287-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/15/09
Claimant: Appellant (1)

Section 96 .5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Victoria K. Conrad (claimant) appealed a representative's April 14, 2009 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 28, 2009. The claimant participated in the hearing. Curt Turner testified on the claimant's behalf. The employer responded to the hearing notice. When the employer's witness was called, he was not available for the hearing. The employer's witness did not contact the Appeals Section during the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on February 4, 2008. The claimant worked full-time setting up machines. The last day the claimant worked was July 15, 2008. She was incarcerated on July 15. The claimant's boyfriend called the employer on various days to report she was unable to work because she was in jail.

The employer assigned the claimant attendance points for the days she did not work as scheduled. Prior to July 15, 2008, the claimant had only accumulated four attendance points. From July 16 through July 28, the employer assessed the claimant 28 attendance points. As of July 29, 2009, the employer no longer considered the claimant an employee because she had accumulated too many attendance points and concluded she may have abandoned her employment.

The claimant realized the employer would not keep her job open while she was incarcerated. The claimant was released from jail on February 28, 2009. On March 3 and a few weeks later, she reapplied for a job with the employer. As of the date of the hearing, the employer has not rehired her.

REASONING AND CONCLUSIONS OF LAW:

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

The law deems a claimant to have left employment if a claimant becomes incarcerated. 871 IAC 24.25(16). Under this presumption, the claimant quit her employment for reasons that do not qualify her to receive benefits. The claimant acknowledged she understood the employer would not keep her position open for over six months.

If the employer discharged the claimant, the law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). When the claimant was incarcerated and unable to work, her absences were not excused. Since the claimant was charged with an act that resulted in her incarceration, the claimant's off-duty conduct resulted in excessive unexcused absenteeism which the law presumes to constitute work-connected misconduct. Under either scenario, the claimant is not qualified to receive benefits as of March 15, 2009.

DECISION:

The representative's April 14, 2009 decision (reference 01) is affirmed. For unemployment insurance purpose, the claimant is presumed to have voluntarily quit her employment without good cause. In the alternative, the employer discharged her for excessive unexcused absenteeism which constitutes work-connected misconduct. Under either situation, the claimant is not qualified to receive benefits as of March 15, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css