

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

DEBORAH E THEELER
2920 DACE ST
SIOUX CITY IA 51105

TYSON RETAIL DELI MEATS INC
PO BOX 2020
2210 W OAKLAWN DR
SPRINGDALE AZ 72765-2020

Appeal Number: 04A-UI-00074-BT
OC: 11/30/03 R: 01
Claimant: Appellant (1)

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 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Deborah Theeler (claimant) appealed an unemployment insurance decision dated December 23, 2003, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Tyson Retail Deli Meats, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2004. The claimant participated in the hearing along with her boyfriend, Ron Marfisi. The employer participated through Matt Chase, Employment Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time laborer from July 25, 1996 through September 25, 2003. According to company policy, the claimant was considered to have voluntarily quit her employment after three days of no-call/no-show. She was in jail from September 22, 2003 through November 25, 2003.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated her intent to quit and acted to carry it out when she failed to report to work or call her employer after September 22, 2003. The claimant bears the burden of proving that the voluntary quit was for a good reason that would not disqualify her. Iowa Code Section 96.6-2. The claimant and her boyfriend both testified that the boyfriend notified the employer on September 22, 2003 that the claimant was in jail but the employer has no record of that telephone call. Even assuming a call was made to the employer on September 22, 2003, there were no calls made after that date. The law presumes it is a quit without good cause attributable to the employer when an employee is absent for three days without giving notice to the employer in violation of company rule. 871 IAC 24.25(4). After three days of not hearing from the claimant, the employer considered her to have voluntarily quit on September 25, 2003. The claimant's separation cannot be attributed to the employer and benefits are denied.

DECISION:

The unemployment insurance decision dated December 23, 2003, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/b