

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA NAVA
Claimant

APPEAL NO. 17A-UI-11373-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 10/15/17
Claimant: Appellant (4)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Maria Nava filed a timely appeal from the November 2, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Nava voluntarily quit on September 6, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 30, 2017. Ms. Nava participated. Dennis Johnson represented the employer. Exhibits A, B and C were received into evidence.

ISSUE:

Whether Ms. Nava separated from the employer in September 2017 for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Maria Nava began her full-time employment with Tyson Fresh Meats in 2012. Ms. Nava worked as a machine operator at the employer's Dakota City, Nebraska plant. Ms. Nava resided in Sioux City during the period of employment. Ms. Nava's regular work schedule was 3:30 p.m. to midnight, Monday through Friday. Production supervisor Taylor Mast was Ms. Nava's immediate supervisor. Prior to the separation in question, Ms. Nava last performed work for the employer on August 31, 2017 and completed her shift that day. Ms. Nava was next scheduled to work on September 1, 2017, but did not return to work that day. Instead, Ms. Nava commenced a period of vacation not approved by the employer and traveled to Texas and Mexico to visit family. Ms. Nava knew at the time she elected to commence the extended absence from work that the employer had not approved the time off. After Ms. Nava was absent for five consecutive shifts without notice to the employer, the employer deemed the employment terminated through job abandonment. The five-day absence that the employer considered included September 1, 5, 6, 7 and 8, 2017. Ms. Nava returned to Iowa on September 21, 2017. On September 22, 2017, Ms. Nava attempted to return to the employment, but the employer did not allow her to return at that time. The period of the unauthorized absence included 14 scheduled work days.

In October 2017, the union local that represents laborer at the Dakota City Tyson Plant, UFCW Local 222, filed a grievance on behalf of Ms. Nava. Pursuant to the grievance resolution process, Ms. Nava returned to the employment on November 24, 2017.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)f provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

Iowa Admin. Code r. 871-24.25(20) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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 evidence in the record indicates that Ms. Nava voluntarily separated from the employment effective September 1, 2017 to commence a period of vacation that she knew had not been authorized by the employer. Ms. Nava's position on whether the vacation was authorized, and whether she knew it was not authorized, evolved substantially between the time of the

November 1, 2017 fact-finding interview and the November 30, 2017 appeal hearing. Ms. Nava's assertions at the appeal hearing that vacation was approved and that she was unaware that it was not approved are not credible. The evidence fails to establish that Ms. Nava had a compelling personal reason for absenting herself from the employment at that time. Even if Ms. Nava had compelling reasons for absenting herself from the employment without authorization, the absence exceeded 10 working days.

Ms. Nava's September 1, 2017 voluntarily quit was without good cause attributable to the employer. Effective September 1, 2017, Ms. Nava is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Nava must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period that preceded Ms. Nava's November 24, 2017 return to the employment.

DECISION:

The November 2, 2017, reference 01, decision is modified as follows. The claimant voluntarily left the employment on September 1, 2017 without good cause attributable to the employer. Effective September 1, 2017, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged benefits for the period that preceded the claimant November 24, 2017 return to the employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs