

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL S MALANO

Claimant

APPEAL NO: 13A-UI-02073-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01/13/13

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Paul S. Malano (claimant) appealed a representative's February 20, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2013. The claimant participated in the hearing. Dzemaal Grcic 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.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 26, 2010. He worked full time as a production worker at the employer's Waterloo, Iowa pork processing facility. His last day of work was November 2, 2012.

Some months prior to November 2 the claimant had requested the employer for a leave of absence to return to Guinea to visit his father who was in poor health. The employer instructed the claimant to obtain some medical documentation to support the request, which the claimant did supply. Based upon the medical documentation which was provided, the employer approved a leave of absence to begin November 5 and from which the claimant was to return to work on December 11, 2012. The claimant did not return to work on December 11 or on the days subsequent to that date; as of December 18 the employer concluded that the claimant had voluntarily quit by job abandonment.

The reason the claimant did not return to work on December 11 was that he was still in Guinea. He determined that he needed to stay longer until he could find someone he was satisfied could

properly care for his father. He did not communicate with the employer to report he needed to extend his leave because he did not have ready access to some means of communication. He did not return to Iowa until about January 13, 2013. When he sought to return to work with the employer on January 14, he did not have any further medical documentation to support that there had been a medical reason that the claimant needed to extend his leave; as a result, the employer confirmed that the claimant's employment was ended.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits, and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed the employee is considered as having voluntarily quit and therefore is ineligible for benefits. *Id.*

Here, the claimant failed to return at the end of the leave of absence; he also did not provide medical documentation to support the need to have extended the leave. He is therefore deemed to have voluntarily quit the employment. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code §96.6-2. While dealing with serious family needs and responsibilities is an important personal reason for not returning to the employment for more than ten days beyond what had been agreed to, it is not a reason attributable to the employer. 871 IAC 24.25(20), (23). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's February 20, 2013 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer by failing to return as scheduled from his leave of absence. As of January 13, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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