

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON RANGEL
Claimant

APPEAL NO. 10A-UI-15909-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

**OC: 09/26/10
Claimant: Appellant (5)**

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Aaron Rangel (claimant) appealed an unemployment insurance decision dated October 22, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Farmland Foods, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 5, 2010. The claimant participated in the hearing. The employer participated through Luis Urteaga, Human Resources Manager. Exhibit D-1 was admitted into evidence. 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:

The issue is whether the claimant's appeal is timely, and if so, whether the claimant's voluntary separation from employment was disqualifying.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last known address of record on October 22, 2010. The claimant received the decision but not in a timely manner, because he moved. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 1, 2010. The appeal was not filed until November 17, 2010, which is after the date noticed on the disqualification decision.

The claimant was employed as a full-time laborer from November 23, 2009 through September 28, 2010, when he arrived late for work because he overslept. He had been placed on a final written warning for attendance on August 10, 2010. At that time he had 11.5 attendance points and would be terminated once he reached 12 points. The claimant received a written warning for attendance on August 4, 2010 and a verbal warning on April 30, 2010.

When he arrived at work on September 28, 2010, the claimant spoke with the human resources manager and asked if he was going to be fired. The human resources manager said that he would but it would take two to three days before the Kronos time keeping system was updated. The claimant opted to quit immediately and signed a resignation form stating that he quit due to personal reasons.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant did not receive the decision within the ten-day time period allowed for the appeal. He did file an appeal immediately upon receiving information he had been disqualified. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by signing a resignation form on September 28, 2010, indicating that he quit for personal reasons.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden.

The claimant contends he voluntarily quit because he was not given any other option, but that is not accurate. Although the claimant had violated his final attendance warning when he overslept on September 28, 2010, he was not going to be fired for another three days and could have worked those days but opted not to do so. The outcome of this case would have been the same if the administrative law judge had concluded the employer discharged the claimant, since excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). See Iowa Code § 96.5(2)(a) and 871 IAC 24.32(7). Benefits are therefore denied.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated October 22, 2010, reference 01, is modified with no effect. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw