

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELEUTERIO RIOS
Claimant

APPEAL NO. 11A-UI-09725-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/26/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 19, 2011, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on August 23, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Ike Rocha. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a production worker for the employer from August 2007 to June 10, 2011. After work on June 10, 2011, he was notified that his brother had been robbed, beaten, and seriously injured in Mexico. The claimant and his brother owned a small ranch in Mexico, and the robbers stole livestock from the ranch after beating his brother. His brother was hospitalized as a result of the beating.

The claimant left to drive to Mexico on Saturday, June 11, to help his brother. Before leaving, the claimant called the plant and left a message for supervisors explaining the family emergency and his need to travel to Mexico.

When he got to Mexico, he spent time caring for his brother and trying to make arrangements for someone to take care of the ranch until his brother was well enough to take over. The claimant sent the employer a fax of the police report to prove his need to travel to Mexico. When his brother's condition improved and he made arrangements for the ranch, the claimant returned to Iowa.

After he returned to Iowa, he reported to work at his scheduled time on June 27, 2011. He explained to management why he was not able to work but was informed that it was not a reason to miss work and his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The evidence fails to show the claimant intended to quit his job when he went to Mexico as shown by the fact that he called in, sent a fax, and return to work when he came back from Mexico. The separation from employment must be considered a discharge.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The claimant 's absence was due to an emergency situation. He notified the employer about his absence and returned as soon as he was able.

DECISION:

The unemployment insurance decision dated July 19, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css