

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SIDRONIO RENDON
Claimant

APPEAL NO. 11A-UI-10244-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 06/19/11
Claimant: Respondent (2R)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Farmland Foods Inc. filed a timely appeal from a representative's decision dated July 25, 2011, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 29, 2011. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Louis Urteaga, Human Resource Manager.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Sidronio Rendon was employed by Farmland Foods from October 28, 2010 until January 11, 2011 when the claimant left employment by failing to report or provide notification for three or more consecutive workdays. Mr. Rendon was employed as a full-time production worker and was paid by the hour.

On or about January 6, 2011, Mr. Rendon reported to the company's human resource manager that the claimant had sustained a job injury. Although Mr. Rendon was specifically instructed to report the matter to the company's safety manager the claimant did not do so. Employees are informed at the time of hire that if they sustain any job-related injuries they must report the injury to the company's safety manager. On January 6, 2011, Mr. Urteaga called the safety manager in Mr. Rendon's presence and instructed the claimant to immediately report to the safety manager's office. For reasons that are known only to the claimant, the claimant did not do so.

Mr. Rendon called in on January 7, 2011 to report his impending absence. The claimant did not call in on January 8, January 10 or January 11, and did not report for work. Under established company policies, employees who fail to report for work or provide notice of their absence for three or more consecutive workdays are considered to have voluntarily left their employment with the company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

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.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant left his employment after he failed to report or provide notification of his impending absence to the employer for three or more consecutive workdays in violation of a known company policy. The claimant had not established that his injury was work related and did not follow the reasonable instructions of the company's human resource manager to immediately report the matter to the company's safety manager. The evidence establishes that Mr. Rendon was aware of that requirement and that he was familiar with the safety manager and his duties. For reasons unknown, the claimant did not report the injury as directed and then discontinued reporting for scheduled work.

The claimant has the burden of proof in this matter. See Iowa Code section 96.6-2. The evidence in the record does not establish that the claimant left his employment with good cause attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated July 25, 2011, reference 02, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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