

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEJANDRO BAROJAS

Claimant

APPEAL NO. 12A-UI-11411-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 08/26/12

Claimant: Appellant (5)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Alejandro Barojas filed a timely appeal from the September 17, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 17, 2012. Mr. Barojas participated. Angie Stevens represented the employer. Spanish-English interpreter Ike Rocha assisted with the hearing. Exhibits One through Five were received into evidence.

ISSUE:

Whether Mr. Barojas separated from the employment for a reason that disqualifies him for unemployment insurance benefits. The administrative law judge concludes that Mr. Barojas voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Alejandro Barojas was employed by Cargill Meat Solutions Corporation as a full-time production worker from August 2011 and last performed work for the employer on January 25, 2012. Mr. Barojas had been experiencing problems with his back and legs. Mr. Barojas had decided that medical care in Iowa was inferior to medical care he could receive in Mexico and elected to travel to Mexico. Mr. Barojas did not request and was not approved for a leave of absence. Instead, Mr. Barojas took the time as sick time and had his spouse call in daily absences due to illness. Mr. Barojas's spouse also worked, and still works, for the employer.

Mr. Barojas attempted to re-enter the United States by airplane on February 12, 2012, but was arrested by United States immigration law enforcement authorities at the airport. Mr. Barojas was incarcerated due to prior criminal charges and/or convictions. Mr. Barojas remained incarcerated while authorities decided whether to deport Mr. Barojas to Mexico. Mr. Barojas continued to be incarcerated until July 13, 2012. Upon his release from custody, Mr. Barojas contacted the union he belonged to about returning to work at Cargill Meat Solutions, but did not contact the employer directly about returning to work.

During most of the period of Mr. Barojas's incarceration, Mr. Barojas's spouse continued to call in daily absences for Mr. Barojas and continued to represent that the absences were due to

illness, when they were not. Based on this misrepresentation by Mr. Barojas's spouse, the employer continued to document Mr. Barojas as an attached employee who was absent due to illness. This continued until Mr. Barojas's spouse failed to call in absences for Mr. Barojas for June 13, 14 and 18, at which time the employer documented a separation from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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 actually establishes a voluntary quit that was effective January 25, 2012. The evidence indicates that Mr. Barojas voluntarily separated from the employment at that time so that he could travel to Mexico. The evidence does not establish a serious medical condition that made it necessary for Mr. Barojas to separate from the employment at that time. Mr. Barojas's assertion that he could not obtain appropriate medical care in Iowa is without merit. The voluntary quit, effective January 25, 2012, was without good cause attributable to the employer and disqualifies Mr. Barojas for unemployment insurance benefits.

Even if the administrative law judge had not found a disqualifying separation to have occurred on January 25, 2012, the evidence would have indicated a disqualifying separation from the employer effective February 12, 2012, the date on which Mr. Barojas's lengthy incarceration commenced. A person who leaves employment because he has become incarcerated is deemed to have voluntarily quit without good cause attributable to the employer. See Iowa Admin. Code section 871 IAC 24.25(16).

Because Mr. Barojas voluntarily quit the employment without good cause attributable to the employer, he is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

DECISION:

The Agency representative's September 17, 2012, reference 01, decision is modified as follows. Effective January 25, 2012, he claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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