

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEYBI D CARRILLO GONZALEZ
Claimant

APPEAL NO: 13A-UI-01839-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINERIDGE FARMS LLC
Employer

**OC: 01/13/13/
Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Pineridge Farms, L.L.C. (employer) appealed a representative's February 14, 2013 decision (reference 01) that concluded Deybi D. Carrillo Gonzalez (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 9, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. John Anderson appeared on the employer's behalf and presented testimony from one other witness, Chris Hodges. Based on the evidence, the arguments of the employer, 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 May 30, 2012. He originally worked full time on the day shift in the employer's harvest department. After repeated requests by the claimant to transfer to the overnight shift in the ham boning department, his request for transfer was granted in November 2012. Since then he worked full time as a meat cutter in the ham boning department on a shift from 5:00 p.m. to 1:30 a.m. His last day of work was the shift from the evening of January 4, scheduled to end at 1:30 a.m. on January 5, 2013.

At approximately 11:25 p.m. the department superintendent, Hodges, met with the claimant as well as the intermediate supervisor and another employee who served as needed as an interpreter. The employer began to go through a verbal counseling with the claimant on a work performance issue, focusing on some examples of how the claimant had not done his work correctly. The claimant began to complain about his job, speaking primarily in English, and how it should be a two-person job. A coworker had initially been assisting him as he was being

trained in his job, but she was no longer doing so. The employer explained to him that assisting the claimant was not this other coworker's job, that she had other duties of her own to do, but the claimant continued to complain that she was not helping him. The employer then attempted to redirect the claimant back to the work performance issue, but the claimant then began to state that he wanted another position. The employer informed the claimant that there was no other position currently available.

The claimant then asked, in English, whether he was being fired. The employer responded to the claimant, both in English and through the interpreter, that he was not being fired, that the employer just needed the claimant to improve on some recent problems with his work performance. The claimant then announced, in English, that he was quitting. Hodges responded, both in English and through the interpreter, that there was no reason to quit. The claimant again announced, in English, that he was quitting. Hodges again responded, both in English and through the interpreter, that there was no reason to quit. The claimant once more announced, in English, that he was quitting. This time Hodges did not further respond. As the claimant had also been insisting that the employer immediately give him some documentation that he had turned in his equipment, Hodges proceeded to prepare an informal statement indicating that since the claimant had voluntarily quit that he had turned in all of his equipment. The interpreter read the statement to the claimant and the claimant signed it. Hodge then told the claimant to come in to the personnel office the next work day to discuss his insurance status. The claimant then left the facility at about 11:45 p.m.

The claimant did come into the personnel office on January 8, 2013. He told the person in the office that he had been fired. However, the claimant's job had not been in jeopardy had he not insisted that he was quitting and had he not left.

The claimant established a claim for unemployment insurance benefits effective January 13, 2013. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). 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. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserted to the employer on January 8 that his separation was not “voluntary” as he had not desired to end the employment; he argued that it was the employer's action or inaction which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as leaving rather than performing assigned work, and leaving because of a belief that the employee's work performance was unsatisfactory, but where the employer had not told the claimant he was discharged. 871 IAC 24.25.

The claimant insisted that he was quitting and left even though the employer told him that he was not going to be discharged; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's February 14, 2013 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of January 4, 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. The matter is **REMANDED** to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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