

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RAFAEL L MARTINEZ
3140 INDIANOLA AVE #32
DES MOINES IA 50315

PINE RIDGE FARMS LLC
1800 MAURY ST
DES MOINES IA 50317

TERESA JONES
LEGAL ASSISTANT
1111 – 9TH ST #380
DES MOINES IA 50314

HUGH J CAIN
ATTORNEY AT LAW
2700 GRAND AVE #111
DES MOINES IA 50312

Appeal Number: 04O-UI-09420-CT
OC: 02/01/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Rafael Martinez filed an appeal from a representative's decision dated June 3, 2004, reference 02, which denied benefits based on his separation from Pine Ridge Farms. After due notice was issued, a hearing was held by telephone on July 8, 2004 with both parties participating. The July 13, 2004 decision of the administrative law judge affirmed the disqualification from benefits. Mr. Martinez filed a further appeal with the Employment Appeal Board which, on August 26, 2004, remanded the matter for a new hearing because the tape of the prior hearing could not be transcribed.

Pursuant to the remand, due notice was issued scheduling the matter for a telephone hearing to be held on October 7, 2004. Mr. Martinez participated personally and was represented by Teresa Jones, Legal Assistant. The employer participated by Charles Newton, Vice President for Human Resources, and Cindy Carreras, Personnel Clerk. The employer was represented by Hugh Cain, Attorney at Law. Guadalupe McCarney participated as the interpreter. The hearing was recessed and reconvened on October 20, 2004. The same parties again participated. Rosie Paramo-Ricoy participated as the interpreter. Exhibits A and B were admitted on Mr. Martinez' behalf. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Martinez began working for Pine Ridge Farms on January 26, 2004 as a full-time production laborer. He had been working for the predecessor company, Iowa Packing. His last day of work was April 24, 2004. He came in on April 26 to report that he had injured his left hand at home and was unable to work. Mr. Martinez asked the employer if there was any one-handed work available but there was none. He was advised to provide the employer with a doctor's statement regarding his injury. Mr. Martinez did not report to work as scheduled on April 27 but did come in later that day with a doctor's statement advising him to remain off work through April 30. He was told to return to work on May 3.

Mr. Martinez saw his doctor again on April 27 because of complaints of pain in his arm resulting from a tetanus shot. The doctor's progress notes from this date indicate that Mr. Martinez was excused from work through April 30. Mr. Martinez did not report to work at the scheduled time on May 3 but did come in later that day. He said his arm was still sore but he did not provide the employer with any statement from his doctor excusing him from work beyond April 30. He was again told that he needed to provide a doctor's statement for his absences after April 30 and needed to call each day that he was going to be absent. Mr. Martinez did not report for work as scheduled on May 4, 5, or 6 but did come to the workplace on May 6. The employer reiterated the information provided to him on May 3. At this point, Mr. Martinez still had a job. On May 7, he called the employer to ask for a letter as to why he had been fired. He was told that he was not fired but did need to provide a doctor's statement regarding his absences.

The employer did not hear further from Mr. Martinez until May 24 when he reported to the workplace and indicated he was ready to resume working. He did not provide a doctor's statement at that time. He was advised that he no longer had employment as the employer presumed he had quit because he had not been in contact.

Cindy Carreras acted as interpreter for Mr. Martinez during the conversations referred to herein. She has spoken Spanish for at least 48 years. She also conducted orientation in Spanish for those employees who had difficulty with English.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Martinez was separated from employment for any disqualifying reason. The administrative law judge concludes that he abandoned his job when he failed to report for work or notify the employer of his intentions after May 7, 2004. He was told at least two times after April 26 that he needed to call each day that he intended to be absent. In spite of being told this, Mr. Martinez was absent without notice to the employer between May 7 and May 24. He had not provided any doctor's statement to the employer

indicating he would be away from work during this period. For the above reasons, the administrative law judge concludes that Mr. Martinez initiated the separation and it shall be considered a voluntary quit. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Martinez had the burden of proving that his quit was for good cause attributable to the employer. Iowa Code section 96.6(2).

Mr. Martinez stopped reporting for work because of the employer's failure to provide him with one-handed work he could perform. The injury which necessitated one-handed work was not work-related. Given this factor and inasmuch as he could not perform his normal job because of his personal injury, the employer was not obligated to return him to work until he had a complete release. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). Moreover, Mr. Martinez did not present the employer with any type of release to return to work when he came back on May 24.

The administrative law judge does not believe Mr. Martinez' failure to provide the doctor's excuse requested by the employer was due to a language barrier. An individual with extensive experience speaking Spanish translated the conversations between Mr. Martinez and the employer. The administrative law judge believes Mr. Martinez was fully aware of what the employer expected of him based on the repeated conversations in early May.

Mr. Martinez has failed to establish that he had good cause attributable to the employer for quitting his job. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 3, 2004, reference 02, is hereby affirmed. Mr. Martinez voluntarily quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf