

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

TELESFORO GONZALES  
PO BOX 10403  
SAN LUIS AZ 85349

EXCEL CORPORATION  
D/B/A CARGILL MEAT SOLUTIONS  
C/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04O-UI-01249-AT  
OC: 07/20/03 R: 04  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3 – Recovery of Overpayments

STATEMENT OF THE CASE:

Excel Corporation, doing business as Cargill Meat Solutions, filed a timely appeal from an unemployment insurance decision dated September 18, 2003, reference 02, which allowed benefits to Telesforo Gonzales. After due notice was issued, a telephone hearing was held by administrative law judge Marlon Mormann on October 27, 2003. The employer participated, but the claimant did not. Following the hearing, Judge Mormann issued decision 03A-UI-11178-MT which disqualified Mr. Gonzales for benefits. Mr. Gonzales filed an appeal with the Employment Appeal Board which, in an order dated February 4, 2004, remanded the case because Mr. Gonzales had not received notice of the previous hearing. Due notice was issued with the claimant's copy being sent to his address in Arizona for a hearing to be held February 25, 2004.

Mr. Gonzales again did not respond to the hearing notice. Human Resources Manager Peggy Beeler participated for the employer.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Telesforo Gonzales was a production worker for Excel Corporation doing business as Cargill Meat Solutions from October 12, 1999 until he resigned April 25, 2003. Mr. Gonzales told Human Resources Manager Peggy Beeler that he was moving to Arizona to go to work. He had not complained of any medical or other problems and gave no other reason for resigning. Mr. Gonzales has received unemployment insurance benefits in the gross amount of \$287.70 since filing a claim for benefits effective July 20, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that Mr. Gonzales left work with good cause attributable to the employer. It does not. A voluntary separation in order to accept other work is not a disqualifying separation if the individual actually performs services for the new employer. The administrative law judge has no evidence to establish that Mr. Gonzales actually worked in Arizona. A resignation in order to move to a new locality in itself is not considered to be for good cause attributable to the employer. See 871 IAC 24.25(2). Since the claimant, the party with the burden of proof, has provided no evidence of subsequent employment, the administrative law judge concludes that benefits must be withheld.

Mr. Gonzales has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The unemployment insurance decision dated September 18, 2003, reference 02, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$287.70.

kjf/b