

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

EVARISTO RAMIREZ
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HAMPTON IA 50441

IOWA AG LLC
2675 HWY 69
GAIT IA 50101

Appeal Number: 05A-UI-05298-DWT
OC: 04/17/05 R: 02
Claimant: Appellant (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, 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 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Evaristo Ramirez (claimant) appealed a representative's May 12, 2005 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Iowa AG LLC (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 9, 2005. The claimant participated in the hearing. Guadalupe McCarney interpreted the hearing. Pablo Duran appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 1998. The claimant worked full time. His most recent job was as a superintendent.

On April 8, 2005, the claimant asked his supervisor, Martin Salinas, for permission for time off so he could go to Mexico. The claimant's brother-in-law was very ill and the claimant wanted to see him. Salinas gave the claimant permission to take time off from work. The claimant could not leave immediately because he had to get permission to leave the area from his probation officer. After the claimant received permission from his probation officer, he left Iowa to go to Mexico.

The claimant worked on April 14 and left for Mexico on April 15. Officials at the border would not let the claimant cross the border on April 17, 2005. The claimant then went back home. Even though the claimant understood he had permission to be off work until April 22, he contacted Salinas on April 19. The claimant planned to return to work early. The claimant did not know that Salinas no longer worked for the employer. The claimant trusted Salinas and believed Salinas. Salinas told the claimant that Peter DeCoster, the boss, decided the claimant no longer worked for the employer. The claimant did not contact anyone after Salinas told him the employer discharged him. The claimant did not return to work.

Duran took over Salinas's position. When the claimant did not return to work at the end of April, the employer concluded the claimant had quit.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The facts establish the claimant had no intention of quitting his employment.

When the claimant left for Mexico on April 15, he knew Salinas was in Texas, but no one told him that Salinas no longer worked for the employer. When the claimant returned to Iowa, he contacted Salinas, the person he understood was still his supervisor. The claimant reasonably relied on Salinas's statement that the employer no longer considered the claimant an employee. Even though the claimant asked the reason for his discharge, Salinas indicated he did not know.

Instead of contacting the claimant to find out why he did not return to work by April 22, the employer did nothing. The employer's failure to contact the claimant when the claimant did not return to work and the claimant's supervisor, Salinas, was discharged about the same time the claimant had permission to be off work amounts to a nondisqualifying separation. Therefore, as of April 17, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 12, 2005 decision (reference 02) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of April 17, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf