

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

HECTOR D BRACERO
102 S ADELLA
OTTUMWA IA 52501

PREMIUM STANDARD FARMS
PO BOX 99
MILAN MO 63556

Appeal Number: 04A-UI-12732-JTT
OC: 10-31-04 R: 03
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)

96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant, Hector Bracero filed a timely appeal from the November 19, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 20, 2004. The claimant did not provide a number at which he could be reached for purposes of participating in the hearing and did not participate. The employer participated through Human Resources Manager Edgar Deporto.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bracero was employed at Premium Standard Farms as a full-time “drop head/break neck” worker on the kill-floor of the employer’s hog processing plant until he was discharged by Mr. Deporto on October 28, 2004 for excessive absences.

The last incident that prompted the employer to discharge Mr. Bracero was Mr. Bracero's absence from work for three consecutive days on October 26 through 28. On each of these days, Mr. Bracero failed to attend work or telephone the employer to inform the employer he would be absent. Mr. Bracero did return to the plant and speak with Mr. Deporto on October 29, 2004. At that time, Mr. Bracero informed Mr. Deporto that he had been absent due to personal problems in Puerto Rico. Mr. Deporto was led to believe that Mr. Bracero may have been in Puerto Rico during the three days he was absent.

The employer has a no fault attendance policy. The policy is set forth in an employee handbook. Mr. Bracero completed a written acknowledgment of receipt of the handbook at the time he was hired. Under the policy, each day an employee is absent the employee earns one point. If an employee earns six points, the next time he is absent he will be discharged due to excessive absenteeism. On October 25, Mr. Bracero had notified the employer that he would be absent that day. Taking into account this absence, Mr. Bracero had earned his six-point maximum. Mr. Bracero's absence from work on October 26 and beyond would have resulted in his termination from employment. The handbook also notifies employees that the employer will conclude after three consecutive days of no-call/no-show that the employee has voluntarily quit.

Mr. Bracero's previous absences had been due to a combination of illness and personal business. Mr. Bracero's absences on July 20 and August 30 had been due to Mr. Bracero or his child being sick. However, Mr. Bracero's absences on October 13, 18, 19, and 25 were due to personal business. Mr. Bracero had been "counseled" by the employer when he reached four points that he was placing job in jeopardy through his absences.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes a voluntary quit or discharge. The findings of fact set forth above indicate that Mr. Bracero would have been discharged due to excessive absences if he were again absent after October 25. However, the evidence in the record does not establish that the employer ever took steps to terminate Mr. Bracero's employment. The administrative law judge concludes that the nature of Mr. Bracero's separation from work was a voluntary quit.

Iowa Code section 96.5-1 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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following

reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Because Mr. Bracero voluntarily quit his employment, Mr. Bracero bears the burden of proving that he quit for good cause attributable to the employer. See Iowa Code section 96.6(2). Mr. Bracero's seven absences throughout October were due to personal business. The employer took no steps to acknowledge Mr. Bracero's voluntary quit of his employment until after Mr. Bracero had been absent for three consecutive days without notifying the employer, in violation of a known company rule. See 871 IAC 24.25-4. The administrative law judge concludes that Mr. Bracero has failed to prove that his voluntary quit was for good cause attributable to the employer.

Mr. Bracero is disqualified from receiving unemployment insurance benefits until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

DECISION:

The November 19, 2004, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as Mr. Bracero has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

jt/pjs