

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

EUTIQUIO LOZANO
Claimant

DISTANT VIEW FARMS LLC
Employer

APPEAL NO. 23A-UI-03888-JT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**OC: 03/12/23
Claimant: Appellant (4R)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.5(12) – Voluntary Quit from Part-time Supplemental Employment

STATEMENT OF THE CASE:

On April 14, 2023, Eutiquio Lozano (claimant) filed a timely appeal from the April 12, 2023 (reference 01) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on November 15, 2022 without good cause attributable to the employer. The claimant requested an in-person hearing. After due notice was issued, a hearing was held on May 11, 2023 at the Decorah IowaWORKS Center. The claimant participated. The employer did not appear for the hearing and did not participate. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records labeled D-1 through D-6, respectively: DBRO, North Dakota Transferring State response to Iowa request for wages, Report on Determination of Combined Wage Claim, Corrected Monetary Record mailed 03/20/23, and Northern Improvement (North Dakota employer) non-protest response to Notice of Claim.

This amended decision is being entered for the sole purpose of making explicit the need for Iowa Workforce Development Benefits Bureau to determine whether removal of the Iowa part-time supplemental wages prevents the claimant from being eligible for benefits in Iowa. The administrative law judge had addressed that concern in the original decision by reference to the requirement that the claimant *meet all other eligibility requirements*.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Eutiquio Lozano (claimant) established an Iowa original claim for benefits that was effective March 12, 2023. Iowa Workforce Development set the weekly benefit amount at \$624.00. The Iowa original claim was established as a *combined wage claim* that included base period wages from an Iowa part-time employment and a North Dakota full-time employment. The claimant was

employed by Distant View Farms, L.L.C. (employer account number 608836) as a part-time dairy farm worker and interpreter until the fall of 2022, when he voluntarily quit. The claimant estimates he last performed work for the employer during the first week in October 2022. At some point in October 2022 or early November, the claimant notified Distant View Farms that he was quitting that part-time employment. There was no particular issue with the part-time employment that triggered the claimant's decision to leave the employment. Rather, the claimant simply wished to be done with dividing his attention between the full-time North Dakota employment and the part-time supplemental Iowa employment. The Iowa part-time employer continued to have work for the claimant at the time the claimant voluntarily quit the part-time employment.

The claimant continued in the full-time North Dakota employment with Northern Improvement until he was laid off in November 2022 at the end of the construction season. The claimant worked for the North Dakota employer as a concrete finisher on freeway and airport projects.

The claimant's base period wages were as follows:

WAGE RECORDS		**CLAIM EFFECTIVE DATE- 03/12/23 **					
ACCT	LOC	Q/Y	TYPE	EARNINGS	CREDIT	AMT-CHGD	R/C
100038	000	3/22	REGULAR	39459.20	13153.07	.00	C
608836	000	3/22	REGULAR	3564.57	1188.19	.00	C
100038	000	2/22	REGULAR	11770.15	3923.38	.00	C
608836	000	2/22	REGULAR	1007.77	335.92	.00	C
100038	000	4/21	REGULAR	7387.10	2462.37	.00	C

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(12) provides:

12. Supplemental part-time employment. If the department finds that an individual is disqualified for benefits under subsection 1 or 2 based on the nature of the individual's separation from supplemental part-time employment, all wages paid by the supplemental part-time employer to that individual in any quarter which are chargeable following a disqualifying separation under subsection 1 or 2 shall not be considered wages credited to the individual until such time as the individual meets the conditions of requalification

as provided for in this chapter, or until the period of disqualification provided for in this chapter has elapsed.

Iowa Administrative Code rule 871-24.27 provides:

871—24.27(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on Form 65-5323, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.


The evidence in the record indicates the claimant voluntarily quit part-time supplemental employment with Distant View Farms, L.L.C. in October 2022 for personal reasons and without good cause attributable to that employer. The employer account of Distant View Farms shall not be charged for benefits. Because the quit was from a part-time supplement employment, the claimant remains eligible for benefits, based on base period wages from full-time employment with Northern Improvement, provided the claimant meets all other eligibility requirements. The wages from the part-time employment with Distant View Farms, L.L.C. shall be removed from the claim until the claimant works in and is paid wages for insured work equal to 10 times his weekly benefit amount. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

DECISION:

The April 12, 2023 (reference 01) decision is MODIFIED in favor of the claimant/appellant as follows. The claimant voluntarily quit part-time supplemental employment with Distant View Farms, L.L.C. in October 2022 for personal reasons and without good cause attributable to that employer. The employer account of Distant View Farms shall not be charged for benefits. The claimant remains eligible for benefits, based on base period wages from full-time employment with Northern Improvement, provided the claimant meets all other eligibility requirements. The wages from the part-time employment with Distant View Farms, L.L.C. shall be removed from the claim until the claimant works in and is paid wages for insured work equal to 10 times his weekly benefit amount. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

REMAND:

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for a determination of whether removal of the Iowa part-time supplemental wages prevents the claimant from being eligible for benefits in Iowa and whether the claimant must instead file for benefits in North Dakota. The administrative law judge decided the separation matter, the only matter that was within the administrative law judge's jurisdiction to decide.



James E. Timberland
Administrative Law Judge

May 17, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.