

**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**

**MARTIN SALINAS
6304 S MARSH LN
PHARR TX 78577**

**IOWA AG LLC
2675 HWY 69
GAIT IA 50101**

**Appeal Number: 05A-UI-06752-SWT
OC: 05/29/05 R: 12
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:

The claimant appealed an unemployment insurance decision dated June 21, 2005, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. Telephone hearings were held on July 18, and 19, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. John Glessner, Betty Etnier, and Peter Decoster participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a processing supervisor from May 22, 2001 to April 10, 2005. Peter Decoster was the claimant's supervisor. On April 9, 2005, the claimant informed Decoster that he needed time off to travel to Texas to be with his wife who was having surgery there. Decoster approved the time off. The claimant worked on April 10, 2005, until about 2:00 p.m. and then left for Texas.

After the claimant left, Decoster and other supervisors heard false rumors that the claimant's wife had left the claimant and he had left to get back together with her rather than to be with her for surgery. As a result, Decoster replaced the claimant with another employee. Later, when the claimant contacted Decoster to ask if he could receive vacation pay for his time off, Decoster told him that the employer had made a change and replaced him as supervisor. Decoster and the claimant discussed other positions and agreed that the claimant could supervise a plant in Ohio. Decoster gave the claimant a fax machine so the claimant could oversee the Ohio operation remotely by phone until the management problems with the operation could be resolved. The claimant in fact did oversee operations by phone and was paid through May 5, 2005. Since that time, the employer has not rehired the claimant or called him back to work either personally or by registered mail. The claimant never intended to quit his job.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant notified the employer that he needed time off for a family medical emergency and was allowed time off. He never intended to quit his employment. He was replaced as supervisor while he was off work. He agreed to supervise the Ohio operation but the job has not materialized so far. The claimant's termination was not due to any misconduct as defined by the unemployment insurance rules in 871 IAC 24.32(1).

DECISION:

The unemployment insurance decision dated June 21, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/sc