

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**HARUN Y MALGA**  
Claimant

**APPEAL NO. 11A-UI-06464-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 04/10/11  
Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Farmland Foods, Inc. filed a timely appeal from an unemployment insurance decision dated May 5, 2011, reference 01, that allowed benefits to Harun Y. Malga. After due notice was issued, a telephone hearing was held June 13, 2011 with Mr. Malga participating. Human Resources Manager Becky Jacobson and Occupational Health Nurse Rhonda Straight participated for the employer. Employer Exhibit A was admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records.

**ISSUE:**

Did the claimant leave work with good cause attributable to the employer?

**FINDINGS OF FACT:**

Harun Y. Malga was employed as a production worker by Farmland Foods, Inc. from December 2, 2009 until he resigned effective April 8, 2011. He was a full-time employee. On April 4, 2011 Mr. Malga went to the human resources office to announce that he was resigning. A human resources representative asked Mr. Malga to fill out an Employee Separation Notice. He did so, listing as a reason the fact that his wife had gotten a job. Mr. Malga actually was resigning because of back pain. Mr. Malga was being treated conservatively with alternative heat and ice treatments, muscle relaxants and over-the-counter pain medication. For a time Mr. Malga was transferred to a different position. After stating on March 28, 2011 that his back was better, he was returned to his regular position. Mr. Malga did not consult his own physician before resigning. He did not prior to resigning tell Farmland Foods that he was contemplating resigning because of a medical condition.

Mr. Malga has received unemployment insurance benefits since filing a claim effective April 10, 2011.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does not.

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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. Under some circumstances an individual may receive unemployment insurance benefits after resigning due to an injury caused or aggravated by working conditions. See 871 IAC 24.26(6). However, in order to receive benefits the individual must establish that prior to resigning he informed the employer of the medical condition, told the employer that he would resign unless the problem was reasonably accommodated and then gave the employer an opportunity to address the situation.

It is clear from the evidence that Mr. Malga had spoken to the employer about the situation. The employer was addressing it. The evidence does not establish that Mr. Malga put the employer on notice that he would resign if some other accommodation were not made. Under these circumstances, benefits must be withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the

department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant must repay the benefits he has received is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated May 5, 2011, reference 01, 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. The question of repayment of benefits is remanded.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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