

**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**

**MIGUEL CAMBEROS-ARTEAGA
917 – 12TH ST
SIOUX CITY IA 51105**

**BROWER CONSTRUCTION COMPANY
PO BOX 1137
SIOUX CITY IA 51102-1137**

**RICHARD STURGEON
PO BOX 3372
SIOUX CITY IA 51102-3372**

**Appeal Number: 04A-UI-00378-AT
OC: 01-12-03 R: 01
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)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Miguel Camberos-Arteaga filed a timely appeal from an unemployment insurance decision dated January 12, 2004, reference 04, which disqualified him for benefits. After due notice was issued, a telephone hearing was held March 4, 2004 with Mr. Camberos-Arteaga participating and being represented by Richard Sturgeon. Human Resources Manager Jim Hawthorne, Superintendent Danny Johnson and Construction Worker Ted Munoz participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Miguel Camberos-Arteaga was employed as a truck driver by Brower Construction Company for approximately seven weeks prior to his resignation on October 15, 2003. He was a full-time employee. On October 14, 2003 Mr. Camberos-Arteaga was involved in an accident in which he backed a tractor/trailer he was operating into a paving machine, causing damage which left the paving machine out of commission for approximately two hours. Mr. Camberos-Arteaga reported the accident to Superintendent Danny Johnson, indicating that the paving machine had hit his vehicle while he was parked. Later that evening, the operators of the paving machine told Mr. Johnson that Mr. Camberos-Arteaga had backed into their equipment.

Mr. Johnson spoke to Mr. Camberos-Arteaga again on the morning of October 15, 2003. Mr. Camberos-Arteaga changed his story. Mr. Johnson prepared to give Mr. Camberos-Arteaga a written warning, but he refused to sign it.

Mr. Camberos-Arteaga had originally been hired as a dump truck driver. He was being given an opportunity to see if he could handle the tractor/trailer vehicles. Mr. Johnson told Mr. Camberos-Arteaga that because of the accident and some other complaints he had received earlier he was going to return Mr. Camberos-Arteaga to driving a dump truck. Without saying anything to Mr. Johnson about the state of repair of the dump truck and without knowing if the truck had been repaired in the last few weeks Mr. Camberos-Arteaga walked off the job and did not return.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Camberos-Arteaga left employment 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. Mr. Camberos-Arteaga testified that he resigned because he had had problems driving the dump truck several weeks earlier because of steering problems. He testified that he did not know if the dump truck had been repaired in the intervening time and did not question the safety of the dump truck when speaking to Mr. Johnson. A reasonable person would have asked before leaving employment. The testimony also did not establish that the truck was in the same state of repair as when he had last driven it. The evidence does not establish a resignation because of unsafe working conditions.

An individual who resigns after being reprimanded is considered to have left work without good cause attributable to the employer. See 871 IAC 24.25(28). The claimant's actions on October 15, 2003 were consistent with one leaving work under such circumstances. Benefits are withheld.

DECISION:

The unemployment insurance decision dated January 12, 2004, reference 04, is affirmed. 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.

dj/b