

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAUL M MIRANDA**  
Claimant

**APPEAL NO: 110-UI-10306-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EICHELBERGER FARMS INC**  
Employer

**OC: 02/27/11**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(28) – Reprimand  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated March 29, 2011, reference 01, that held the claimant was not discharged for misconduct on March 3, 2011, and benefits are denied. A telephone hearing was held on October 26, 2011. The claimant participated. Janet Smith, HR Manager; Jason Randall, Farm Supervisor; and Andy Eichelberger, Sow Farm Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUES:**

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

The issue is whether claimant was overpaid unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work on September 5, 2008, and last worked for the employer as a full-time herdsman on March 3, 2011. On March 3, the manager was giving instruction to the claimant about an issue with heat-lamp parts and an argument ensued. Claimant kept walking away from his manager, and finally told him to fuck-off. When he was told he was being given a two-day suspension, claimant requested an interpreter that his manager provided. Through the interpreter with other employees present, the manager told claimant he was suspended that day and the next with a return to work on Monday, March 7. The manager told claimant he was suspended for rudeness, failure to follow instructions, and insubordination. Claimant responded if he was sent home he was not coming back, and he would file for unemployment. His usual start time is 6:00 a.m.

Claimant did not report to work at 6:00 a.m. on Monday, March 7. He called a manager about 1:30 p.m. that day if he could come back to work the next day. He was told that he had walked-off the job with a statement he was quitting and he failed to return to work at the end of his suspension.

Claimant has received benefits on his current unemployment claim.

**REASONING AND CONCLUSIONS OF LAW:**

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(28) 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:

(28) The claimant left after being reprimanded.

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer on March 7, 2011 when he failed to return to work after a suspension.

The employer exercised care with the assistance of an interpreter to explain to claimant in the presence of other Spanish speaking employees he was being suspended for two days (March 3 and 4) with a return to work date on Monday, March 7. Claimant responded with a statement that he intended to quit and file for unemployment. His intent to quit was manifested by his failure to return to work on March 7. The employer-manager statement and testimony is more credible than claimant based on the Spanish employees who were present on March 3 and witnessed the statement. Claimant's call to the employer on March 7 was too late to save his job.

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.

Since claimant is disqualified from receiving benefits by reason of this decision, the overpayment issue is remanded to Claims for a decision.

**DECISION:**

The department decision dated March 29, 2011, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to the employer on March 7, 2011. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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