

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PEDRITO HERNANDEZ
Claimant

MAC RIZZO, LLC
Employer

APPEAL 25A-UI-01733-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/19/25
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Mac Rizzo, LLC, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) February 18, 2025 (reference 04) unemployment insurance (UI) decision. IWD found Pedrito Hernandez eligible for REGULAR (state) UI benefits because IWD concluded Mr. Hernandez voluntarily quit working for the employer on January 24, 2025 because working conditions were detrimental to him, and his leaving was caused by the employer. The employer appealed on February 27, 2025. On March 3, 2025, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Hernandez for a telephone hearing scheduled for March 24, 2025.

The administrative law judge held a telephone hearing on March 24, 2025. Mr. Hernandez participated in the hearing personally. Kimberly Alawneh, Mr. Hernandez's mother, participated as Mr. Hernandez's representative and as a witness. The employer participated in the hearing through Jeff Livingston, general manager and Pat Walker, human resources manager. The administrative law judge took official notice of the administrative record from IWD and admitted Employer's Exhibits 1-6, and Claimant's Exhibit A as evidence. The administrative law judge did not admit Claimant's Exhibits B-C as evidence because Mr. Hernandez did not send a copy of these documents to the employer.

The administrative law judge concludes Mr. Hernandez is eligible for REGULAR (state) UI benefits based on how his job ended with this employer, and the issues of overpayment and repayment are moot.

ISSUES:

Did Mr. Hernandez voluntarily quit without good cause attributable to the employer?
Did IWD overpay Mr. Hernandez REGULAR (state) UI benefits?
If so, should he repay the benefits?

¹ Appellant is the person or employer who appealed.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Hernandez began working for the employer in February 2024. He worked as a full-time certified water technician. His employment ended on January 31, 2025.

Mr. Hernandez and another employee (Employee A) had several arguments at work and outside of work. The evening of Thursday, January 23, Mr. Hernandez called the police on Employee A. Mr. Hernandez then texted Mr. Livingston several times that night and into the early morning of January 24. Mr. Hernandez texted the following to Mr. Livingston:

So everything that has been going on is just total crazy I know we've had a few talks about [Employee A] and everything that's going on so Jeff I know you have given me a great opportunity at Servpro but this is too much [Employee A] can let it all out whatever the case might be but I just wanted to tell ya Thank You for giving me this Opportunity for working at Servpro but now our personal problems are interfering with our work lives and you know I've told you I don't mix those at all cause of shit like this so I don't know if [Employee A] needs to go or if I need to go but whatever decision you make I will stand behind you! I'm real tired of your employee threatening my job numerous of times and if there is nothing done I will have my lawyer contact you or jeff short but I don't like it and I'm done I have my water certificate and I'll take that and go someplace else but I just wanted to thank you and Jeff short and Anne short for giving me this opportunity for working at Servpro I know you all love me there but something has to be done and I haven't seen any change so whatever your decision is I will respect it but you being the GM of Servpro I'd keep a real close eye on [Employee A] I mean for god Sake he uses the gas cards for personal stuff before and get high on lunch you want someone like that going in peoples homes! But like I said I will put in my two weeks! But I will respect your decision! So thank you again Jeff!²

I don't know what to do but I know I'm fed up with this shit and I don't need it like I told you before Jeff I'm there to go to work and get shit done and jobs done and make my check at the end of the week and go home yes we might goof off sometimes but work is more important so and you and Brian have told me that work is very important and I've taken that to heart so I know this is a big decision for you but I will respect it! So again Thank You! For the opportunity that You Jeff Livingston, Jeff short, Brian Burkle, and Anne short have given me I do appreciate it and Thank You again! But I'm tired of this shit and I don't know what needs to be done but like I said I will respect your decision but I just can't handle it anymore so Thank You!³

So please let me know what we're gonna do moving forward!⁴

Jeff I'm need to take this day as a PTO day bc again the police were involved bc of [Employee A]⁵

I should not have to come to work and be threatened by an employee named [Employee A] and to be honest with you jeff I am scared of him. Him threatening

² Employer's Exhibit 4.

³ Id.

⁴ Id.

⁵ Id.

my job all the time makes it real hard for me to come in there. I love my job but several times this has happened and I have seen no changes. So in a round about way I feel like [Employee A] or I have to go. Several times I have told you about him getting high on the job. I come to work and I feel threatened by him.⁶

I will take a PTO day off today until the temperature cools down there with [Employee A].⁷

I feel threatened by this man because he got me hired there he can also get me fired please approve my PTO I need to and tell me if you want [Employee A] or me gone?⁸

I can't do this shit no more I was going to take my fucking life last night cause I see a lot of shit going on it's just too much! So do you want to have me put in two weeks and approve my PTO and work place violence is a real thing! I have to seek professional mental help because it's too much and the threats that [Employee A] have made!⁹

Based on Mr. Hernandez's text messages, Mr. Livingston concluded that Mr. Hernandez gave the employer a two-week notice that he was quitting.

On January 24, Mr. Hernandez called in to Mr. Livingston and asked for paid-time-off that day because of issues with Employee A. Mr. Livingston approved Mr. Hernandez's request. At about 7:00 a.m., Mr. Hernandez texted Mr. Walker and asked for the telephone number of a former employee who had started a different company because "i'm trying to go work for him...ldk what's going on with Servpro [the employer] but there going into the ground that's why I'm trying to get ahold of him so i can go work for him lol!"¹⁰ Mr. Walker declined.

At some point, Mr. Hernandez asked for and the employer approved him to be on leave January 27-31. On, or about, January 31, Mr. Livingston directed Mr. Hernandez to return the employer uniform and other equipment. Mr. Hernandez did so on January 31. While at the office that day, Mr. Livingston gave Mr. Hernandez a document that he had typed. Mr. Livingston gave the document to Mr. Hernandez and asked him to sign it. Mr. Hernandez did not read the document, but he signed it. Mr. Hernandez assumed the document was related to his tools. The document was a resignation letter. Mr. Hernandez's employment ended on January 31.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Hernandez did not quit. The employer terminated his employment on January 31, 2025 for a reason that does not disqualify him from receiving UI benefits.

Iowa Code section 96.5(1) provides, in relevant part:

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

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Employer's Exhibit 5.

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.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Iowa Admin. Code r. 871-24.18 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 with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits, but the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code sections 96.5(1)"a" through "i" and 96.5(10).

In general, the employer has the burden to prove that a claimant is disqualified from receiving UI benefits.¹¹ The employer has the burden of proof in establishing disqualifying job misconduct.¹² The issue is not whether the employer made a correct decision in separating Mr. Hernandez from employment, but whether he is entitled to unemployment insurance benefits.¹³ Misconduct must be "substantial" to warrant a denial of job insurance benefits.¹⁴ But, the claimant has the burden of proving that a voluntary leaving was for good cause attributable to the employer.¹⁵ A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.¹⁶ "Good cause" for leaving

¹¹ Iowa Code § 96.6(2).

¹² *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

¹³ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

¹⁴ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

¹⁵ *Id.*

¹⁶ *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular.¹⁷

In this case, Mr. Hernandez did not quit. In his various texts to Mr. Livingston, Mr. Hernandez expressed frustration and made several, sometimes contradictory, statements. But he never expressed a desire to actually end his employment. The employer highlights the part of the texts where Mr. Hernandez states "...I'm done I have my water certificate and I'll take that and go someplace else..."¹⁸ and Mr. Hernandez asking Mr. Walker for the telephone number for another employer. But, viewed in context, neither of these texts, or any of Mr. Hernandez's other texts, show that he quit.

Before Mr. Hernandez states that he is done and will take his water certificate someplace else, he states "...I don't know if [Employee A] needs to go or if I need to go but whatever decision you make I will stand behind you! I'm real tired of your employee threatening my job numerous of times and if there is nothing done I will have my lawyer contact you or jeff short but I don't like it and I'm done I have my water certificate and I'll take that and go someplace else...."¹⁹ And, after Mr. Hernandez says he is done and will take his water certificate someplace else, he says "...something has to be done and I haven't seen any change so whatever your decision is I will respect it but you being the GM of Servpro I'd keep a real close eye on [Employee A]... But like I said I will put in my two weeks! But I will respect your decision!"²⁰ In context, these texts show Mr. Hernandez asking the employer to do something. This is not Mr. Hernandez quitting.

As for Mr. Hernandez's text to Mr. Walker asking for another employer's telephone number, this also doesn't show that Mr. Hernandez quit. It shows Mr. Hernandez was looking for new employment because he had issues with the employer, but it does not show that Mr. Hernandez quit.

Mr. Hernandez's employment ended on January 31 because Mr. Livingston told Mr. Hernandez to return the employer's equipment and tricked Mr. Hernandez into signing a resignation notice. Mr. Hernandez had no intention of resigning. But the employer was done with Mr. Hernandez. The employer ended Mr. Hernandez's employment, but hasn't established disqualifying, job-related misconduct. So, Mr. Hernandez is eligible for UI benefits.

Since Mr. Hernandez is eligible for REGULAR (state) UI benefits per this decision, the issues of overpayment and repayment are moot. An issue being moot means there is nothing left to decide.

¹⁷ *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

¹⁸ Employer's Exhibit 4.

¹⁹ *Id.*

²⁰ *Id.*

DECISION:

The February 18, 2025 (reference 04) UI decision is AFFIRMED. The employer discharged Mr. Hernandez from employment on January 31, 2025 for a reason that does not disqualify him from receiving UI benefits. Mr. Hernandez is eligible for REGULAR (state) UI benefits, as long as no other decision denies him UI benefits.

/s/ *Daniel Zeno*

Daniel Zeno
Administrative Law Judge

March 31, 2025
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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.