

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE L MARTINEZ**  
Claimant

**APPEAL NO: 06A-UI-08998-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KIMCO CORPORATION**  
Employer

**OC: 07/23/06 R: 01  
Claimant: Respondent (4)**

Section 96.5(1)a – Quit for Other Employment

**STATEMENT OF THE CASE:**

Kimco Corporation filed an appeal from a representative's decision dated August 30, 2006, reference 02, which held that no disqualification would be imposed regarding Jose Martinez' separation from employment. After due notice was issued, a hearing was held by telephone on September 25, 2006. The employer participated by Michael Stevens, Area Manager, and was represented by Audrey Harley of National Employers Council, Inc. Mr. Martinez did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Mr. Martinez was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Martinez began working for Kimco Corporation on November 9, 2005 and last performed services on April 12, 2006. He was employed as a janitor and was working approximately 25 hours per week at the time of separation. Mr. Martinez was presumed to have quit when he stopped reporting for available work. Within the month following his separation, the employer spoke with Mr. Martinez' daughter. She indicated her father had found work elsewhere. Continued work would have been available with Kimco Corporation if Mr. Martinez had continued reporting for work.

Mr. Martinez filed a claim for job insurance benefits effective July 23, 2006. He indicated that his last employment had been from April 15 through July 21, 2006 with Plumrose USA, Inc.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes from all of the evidence that Mr. Martinez quit his job with Kimco Corporation to accept employment elsewhere. His daughter told the employer that he had found other work. This statement is confirmed by the fact that Mr. Martinez listed a different last employer when he filed for unemployment benefits. Based on the foregoing, the

administrative law judge concludes that he quit in good faith for the sole purpose of accepting employment with Plumrose USA, Inc. He had performed services in the new employment when he filed his claim for job insurance benefits. As such, Mr. Martinez is entitled to benefits pursuant to Iowa Code section 96.5(1)a. Benefits paid as a result of the decision herein shall not be charged to Kimco Corporation.

**DECISION:**

The representative's decision dated August 30, 2006, reference 02, is hereby modified. Mr. Martinez quit his employment with Kimco Corporation in good faith for the sole purpose of accepting employment elsewhere and had performed services in the new employment when he filed his claim for job insurance benefits. Benefits are allowed, provided he satisfies all other conditions of eligibility, but shall not be charged to the account of Kimco Corporation.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs