

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCISCO CURIEL
Claimant

APPEAL NO. 12A-UI-04040-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMW GROSCHOPP INC
Employer

**OC: 03/11/12
Claimant: Appellant (1)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Francisco Curiel, filed an appeal from a decision dated April 9, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 3, 2012.

The claimant provided a telephone number to the Appeals Section. That number was dialed at 3:15 p.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section prior to the close of the record. By the time the record was closed at 3:27 p.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer, EMW Groschopp, Inc., participated by Vice President Connie Vander Ploegg..

ISSUE:

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

FINDINGS OF FACT:

Francisco Curiel was employed by Groschopp from July 27, 2010 until January 11, 2012 as a full-time temporary worker in the shipping and receiving area. He was hired as a regular full-time employee but was changed to a temporary status October 20, 2012. This is what the employer does for employees who are not able to maintain an acceptable attendance record, but still keep them employed. It means the employee may call and ask for the day off but they will not be disciplined under the attendance policy. An employee who establishes they are able to maintain an acceptable attendance record will be returned to regular full-time status.

The first week in January 2012 the claimant received his annual review from his supervisor. He was not happy with the result and complained. The supervisor told Mr. Curiel the company had an open door policy and he was free to contact Vice President Connie Vander Ploegg and discuss his concerns with her. He did not. On Monday, January 9, 2012, the claimant called and said he was going to be absent because he was not feeling well. The same thing

happened the next day. On January 11, 2012, he left a voice mail message for Warehouse Coordinator Sally Koel saying he would not be returning to work.

The record was closed at 3:27 p.m. At 3:48 p.m. the claimant called and requested to participate. The claimant received the hearing notice prior to the May 3, 2012 hearing.

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 claimant quit his employment with Groschopp because he was unhappy with the review he received. He was invited to discuss his concerns with the vice president but elected not to do so. If he had other reasons for quitting they are not known as he did not participate in the hearing. Therefore the administrative law judge must conclude he quit because of the review/reprimand. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be

issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant did not establish good cause to reopen the hearing. He received the notice of the hearing, provided a phone number, was left a voice mail message and still did not participate. The claimant has not established good cause for failing to participate in the hearing. Therefore, the claimant's request to reopen the hearing is denied.

DECISION:

The representative's decision of April 9, 2012, reference 01, is affirmed. Francisco Curiel is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css