

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JARED G GUZMAN
Claimant

APPEAL NO. 090-UI-08879-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURKE MARKETING CORPORATION
Employer

**Original Claim: 02/01/09
Claimant: Appellant (5)**

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jared Guzman filed a timely appeal from the February 23, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 7, 2009. Mr. Guzman participated. Spanish-English interpreter Ike Rocha assisted with the hearing. Terry Ubben, Human Resources Manager, represented the employer. Shelly Seibert, Human Resources Generalist, was also present on behalf of the employer. Exhibits One, Two, and Three were received into evidence.

ISSUE:

Whether Mr. Guzman separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jared Guzman commenced his employment at Burke Marketing Corporation on April 14, 2008 and worked as a full-time sanitation laborer. Mr. Guzman was assigned to the overnight shift. Mr. Guzman last performed work for the employer on January 14, 2009.

On January 5, 2009, Mr. Guzman met with Mr. Ubben to discuss his vacation request. Mr. Guzman requested January 11-24. Mr. Guzman wanted to travel to Texas to help his father with a roofing project. Mr. Ubben approved the vacation request. Mr. Guzman and Mr. Ubben agreed to a January 25, 2009 return date. During the January 5 meeting, Mr. Ubben reviewed the calendar with Mr. Guzman to be certain that Mr. Guzman understood he would be expected to return on January 25, 2009.

Mr. Guzman decided to delay the start of his vacation until January 15, 2009. This did not alter the date Mr. Guzman was expected to return to the employment.

Mr. Guzman did not return to work on January 25. Mr. Guzman was a no-call, no-show for his shifts on January 25, 26, 27, and 28. On January 30, Mr. Guzman appeared to work his shift and was told he needed to speak Mr. Ubben. Mr. Guzman was not allowed to work. Mr. Ubben

met with Mr. Guzman on February 2. Mr. Guzman confirmed he knew he was to return on January 25. Mr. Guzman further conceded that he had not maintained appropriate contact with the employer about his desire to delay his return to work date. On February 3, Mr. Ubben notified Mr. Guzman that he would not be allowed to return to the employment.

Included in the employer's written vacation policy was a provision that an employee who failed to return within three days of his expected return date would be terminated and would have to reapply for employment. The policy was contained in a handbook that was provided to Mr. Guzman at the start of the employment.

The employer also had a written no-call, no-show policy that had been reviewed with Mr. Guzman on June 11, 2008 after Mr. Guzman was a no-call, no-show on May 30. The policy indicated that two consecutive no-call, no-show absences or two no-call, no-show absences within a year would result in termination of the employment.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Where a person is absent from work three days without notifying the employer in violation of the employer's policy, the person is deemed to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4).

The weight of the evidence establishes a voluntary quit without good cause attributable to the employer. The evidence indicates that Mr. Guzman clearly understood he was to return to work on January 25, 2009 and did not do so. The evidence fails to support Mr. Guzman's assertion that someone else had authorized a delayed return to work. The evidence indicates that Mr. Guzman was a no-call, no-show for four consecutive shifts. The evidence indicates the employer had a no-call, no-show policy and that Mr. Guzman was aware of the policy.

Mr. Guzman is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Guzman.

DECISION:

The Agency representative's February 23, 2009, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw