

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILIO RIVAS
Claimant

APPEAL NO. 11A-UI-06121-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARL SCHULER MASONRY CONSTR
Employer

OC: 04/10/11
Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Emilio Rivas, filed an appeal from a decision dated May 3, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 27, 2011. The claimant participated on his own behalf and Patricia Vargas acted as interpreter. The employer, Carl Schuler Masonry, participated by President Steve Schuler, Secretary/Treasurer Ann Schuler, and Foreman Kenny Vandeest.

ISSUE:

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

FINDINGS OF FACT:

Emilio Rivas was employed by Carl Schuler Masonry from October 15, 2007 until April 11, 2011 as a full-time mason tender. In January 2011, President Steve Schuler counseled the claimant about his work performance and said if he did not start working harder and doing his job, the employer was going to take away his one week of vacation and possibly reduce his wages.

On April 8, 2011, Mr. Schuler instructed Foreman Kenny Vandeest to tell the crew there was no work for them that day but to come in on Saturday, April 9, 2011, to build scaffolding for the job to begin on Monday, April 11, 2011. Mr. Rivas was present and told the foreman if he did not work on Friday, he was not going to work on Saturday. The claimant was told to go talk to Mr. Schuler, but he did not. Mr. Vandeest verified this when he came to the office and told the company president what had happened. Mr. Schuler told the foreman that if the claimant showed up on Monday, to send him to the office.

When Mr. Rivas was no-call/no-show on Saturday, April 9, 2011, and when he showed up at the work site on April 11, 2011, he was sent by Mr. Vandeest to talk to Mr. Schuler. The employer told him his vacation had been “docked” because of his no-call on Saturday. The claimant said he did “not have to take that” and he could find work elsewhere. Mr. Schuler told him if he was quitting, to turn in the keys to the gang box and the forklift, which he did.

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.

The claimant had been advised he was in danger of losing one of his benefits as a result of his poor work performance and attendance. In spite of that warning, he was no-call/no-show for a scheduled work day and the threatened discipline was imposed. When an employer demotes an employee for misconduct warranting discharge, an employee who subsequently leaves employment does so without good cause attributable to the employer, and is disqualified from receiving unemployment benefits. *Goodwin v. BPS Guard Services, Inc.*, 524 N.W.2d 28 (Minn. App. 1994). The record establishes the claimant quit without good cause attributable to the employer and he is disqualified.

DECISION:

The representative's decision of May 3, 2011, reference 01, is affirmed. Emilio Rivas is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw