

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SOLOMON D LUAK
Claimant

APPEAL NO. 12A-UI-01112-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURKE MARKETING CORPORATION
Employer

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

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Solomon Luak filed a timely appeal from a representative's decision dated January 19, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on February 23, 2012. Claimant participated personally. Participating on behalf of the claimant was Mr. Jay Kamath, Attorney at Law. The employer participated by Ms. Shelly Seibert, Human Resource Generalist.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Solomon Luak was employed by Burke Marketing Corporation from May 4, 2009 until February 16, 2011 when he was discharged and removed from company employment roles. Mr. Luak was employed as a full-time sanitation worker working the company's third shift and was paid by the hour. His immediate supervisor was Jimmy Banks.

On December 30, 2010, Mr. Luak began an approved vacation period through January 10, 2011. The claimant then requested to have an approved leave of absence from January 11, 2011 through February 10, 2011 for the purpose of returning to the continent of Africa for personal reasons. The parties agreed that the claimant would be expected to return to work on Sunday, February 13, 2011. The employer requested that Mr. Luak notify the employer if his time away from work needed to be extended.

Mr. Luak did not return as agreed on February 13, 2011. Absences after that date were unexcused and after the claimant had failed to report for three or more consecutive workdays without providing any additional notification to the employer, the company considered that Mr. Luak had chosen to voluntarily leave his employment based upon the provisions of the company handbook.

During this time Mr. Luak had traveled to the Sudan in the continent of Africa. The claimant was initially unable to call in to report that he would be unable to return by his expected date and had initially been unable to call in to report any additional impending absences. The country was engaged in civil war at the time and the claimant was having substantial difficulty in obtaining outside communication or transportation within the country. Mr. Luak returned to the geographic area of his employment on June 11, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Mr. Luak left employment with good cause attributable to the employer. It does not.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report for work. Inasmuch as the claimant failed not only to report for work or notify the employer for three or more consecutive workdays after the expiration of his leave of absence in violation of the employer's policy, the claimant failed to return for approximately four months. The employer was not expected to hold the claimant's employment open for him without hearing any word from the claimant for such an extended period.

Although the administrative law judge is sympathetic to Mr. Luak's situation, the administrative law judge must nevertheless rule that the claimant chose to absent himself from ongoing employment and to return to an area that the claimant knew in advance was troublesome and might prevent his return on the date as agreed and might impact his ability to communicate with this employer. The employer could not be expected to hold the claimant's job position open for him for a four-month period without hearing anything from Mr. Luak. The claimant's reasons for leaving employment were not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated January 19, 2012, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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