

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLOS BUSTAMANTE
Claimant

APPEAL NO: 09A-UI-16665-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVENTURE LANDS OF AMERICA INC
Employer

OC: 10-04-09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
87A IAC 24.25(1) – Lack of Transportation

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 29, 2009, reference 03, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on December 10, 2009. The claimant participated in the hearing. Patty Morse, Payroll, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time seasonal sanitation department employee for Adventure Lands of America from May 25, 2009 to August 9, 2009. He was riding to work with another employee and the other employee was separated from his employment so the claimant no longer had a ride beginning August 6, 2009. He called supervisor Marvin Perez and stated he did not have transportation but was trying to find another way to work. It took him approximately three days to find new transportation and he called the employer again and spoke to Mr. Perez August 9, 2009, and said he found new transportation but was told Edgar Ochoa, the supervisor in charge, said he was no longer needed. Mr. Perez did not have the authority to hire or fire employees. The claimant knew Mr. Ochoa did not work on Mondays and called on a Monday anyway. He did not call back and talk to Mr. Ochoa on Tuesday to explain what happened and to tell him he found new transportation or ask Mr. Perez to have Mr. Ochoa to call him either time he called in. The sanitation department needed employees, especially those that spoke English, and the employer's witness does not believe Mr. Ochoa would have terminated the claimant's employment for missing a few days of work because he was a good worker. Additionally, the sanitation department employees often have transportation problems so the attendance policy was not as strict as it might have been in different departments.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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(1) 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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The claimant had transportation issues but rather than talk to Mr. Ochoa on the days he was there, which was every day but Monday as the claimant was aware, the claimant called twice on Mondays and talked to Mr. Perez instead. While Mr. Perez said the claimant was discharged, he did not have the power to terminate his employment and the claimant failed to call back and speak to Mr. Ochoa. Because the claimant was absent for at least three days due to transportation issues, the administrative law judge must conclude he voluntarily left his job, as that term is defined by Iowa law, without good cause attributable to the employer. Therefore, benefits must be denied.

DECISION:

The October 29, 2009, reference 03, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs