IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JUSTINO MURGUIA JR
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CURLYS FOODS
C/O KATHY PETERSON
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Appeal Number:	**05A-UI-02945-RT**
OC: 05-16-04	**R: 01**
Claimant: Appellant (1)	

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor— Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

<div align="center">STATE CLEARLY</div>

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Justino Murguia, Jr., filed a timely appeal from an unemployment insurance decision dated March 18, 2005, reference 03, denying him unemployment insurance benefits because he voluntarily quit work on February 8, 2005. After due notice was issued, a telephone hearing was held on April 7, 2005, with the claimant participating. Kathy Peterson, Human Resources Manager, participated in the hearing for the employer, Curlys Foods. This appeal was consolidated with appeal number 05A-UI-02944-RT for the purposes of the hearing with the consent of the parties. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time trimmer from September 12, 2003 until he separated from his employment on February 8, 2005. The claimant requires a work authorization card in order to allow him to work in the United States. The claimant's work authorization card was to expire January 15, 2005. On that date the claimant had not obtained a new work authorization card. The employer and the claimant agreed to place the claimant on a leave of absence beginning January 17, 2005 for him to get his work authorization card. Originally, the claimant was to return to work on January 19, 2005. However, the claimant encountered problems getting his work authorization card and he called the employer and informed the employer that it was going to take a couple of weeks. The employer extended the leave of absence through January 28, 2005 with the claimant to return to work on January 31, 2005. The claimant came in on January 31, 2005 to see the employer and stated that he still did not have his work authorization card. The claimant said he had an appointment yet that day. The claimant then called the employer later that day and indicated that he still did not have his work authorization card. The employer extended the leave of absence to February 4, 2005 with the claimant to return to work on February 7, 2005. On February 7, 2005, the claimant called the employer and again indicated that he did not have a work authorization card. The claimant said something about not having an alien number. The claimant was specifically told to come in to work on February 8, 2005. The claimant did not do so or call the employer. Several weeks thereafter, on or about February 21, or 22, 2005, the claimant called and left a voice mail message that he still did not have his work authorization card because someone was using his name. Finally, the claimant called and left a message for the employer on February 28, 2005 indicating that he did then have his work authorization and could start work. However, when the employer had not heard from the claimant for so long, it had filled his position and the employer no longer had a position for the claimant.

Pursuant to his claim for unemployment insurance benefits filed effective May 16, 2004 and reopened effective January 23, 2005 and February 6, 2005, the claimant has received no unemployment insurance benefits since going on the leave of absence on January 17, 2005 and since separating from the employer on or about February 8, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit and was, therefore, terminated when he failed to return after a leave of absence that was continually extended to allow the claimant the opportunity to get a work authorization card permitting him to work in the United States. The claimant first testified that he was discharged on January 12 or 13, 2005. However, the claimant later conceded that he was placed on a leave of absence and implied that he consented to a leave of absence.

The claimant conceded that he did not have a valid work authorization card and that it did expire effective January 15, 2005. The employer's witness, Kathy Peterson, Human Resources Manager, credibly testified that she last spoke to the claimant on February 7, 2005, the day that he was supposed to return to work and that the claimant still did not have a valid work authorization card. Nevertheless, Ms. Peterson told the claimant to come in the next day, February 8, 2005. The claimant did not do so and did not call the employer for several weeks thereafter. At that point the employer believed that the claimant had voluntarily quit since he had not shown up for work and the employer went ahead and replaced the claimant. The claimant's testimony to the contrary is not credible as noted below. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective February 8, 2005 when he failed to show up for work as instructed and did not notify the employer for several weeks thereafter. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. Rather, the evidence indicates that the claimant lost his work authorization card and repeatedly obtained extensions on a leave of absence purportedly to get a new work authorization card. Whether he even got one at all is uncertain. A work authorization card permitting him to work was not obtained on February 7, 2005 and the claimant failed to come to the employer's location the next day, February 8, 2005. The administrative law judge concludes that the claimant left his employment without good cause attributable to the employer.

The claimant's testimony to the contrary is not credible. The claimant first testified that he was discharged on January 12 or 13, 2005 but then conceded that he was actually placed on a leave of absence beginning January 17, 2005. There is no evidence that the claimant was ever officially told that he was fired or discharged. The claimant testified at one point that he had a telephone conversation with Ms. Peterson on February 3, 2005 when he explained to her that he still did not have a valid work authorization card and had to go back to get an alien number. Later, the claimant repudiated at least a portion of that telephone call. Ms. Peterson credibly testified that the claimant made no such call at that time. Ms. Peterson's testimony was clear and forthright and direct without ambiguity or equivocation. It appears to the administrative law judge that the claimant had continuing difficulty in getting a work authorization card and basically just quit contacting the employer until such time as he may have had one but by that time the employer had treated the claimant as a voluntary quit and terminated him because the claimant had not responded to the employer in several weeks and had not come in as specifically directed on February 8, 2005. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on February 8, 2005 and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of March 18, 2005, reference 03, is affirmed. The claimant, Justino Murguia, Jr., is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

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