

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FILOMENO RODRIGUEZ

Claimant

APPEAL NO. 13A-UI-04462-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLUE SKY SATELLITE SERVICE INC

Employer

OC: 03/10/13

Claimant: Appellant (4)

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

Filomeno Rodriguez filed a timely appeal from the April 8, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 21, 2013. Mr. Rodriguez participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether Mr. Rodriguez 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: Filomeno “Charlie” Rodriguez was employed by Blue Sky Satellite Service, Inc., as a full-time Dish Network installer from August 2011 until May 25, 2012, when he voluntarily quit to accept new employment at Williams Wilbert Vault Works, Inc., Mr. Rodriguez decided to leave the employment with Blue Sky Satellite Service for the new employment because he was tired of the unpredictable quit time each day. Mr. Rodriguez would start his work day at 7:00 a.m. and would learn then his assigned service and/or installation calls for the day. Mr. Rodriguez’s workday might end at 5:00 p.m. or substantially later depending on the work scheduled for the day. Mr. Rodriguez provided the employer notice that Saturday, May 26, 2012 would be his last day. The employer elected to end the employment one day early. Mr. Rodriguez had accepted the new employment at the time he gave Blue Sky Satellite Service notice of his quit. Mr. Rodriguez separated from Blue Sky Satellite Service on a Friday and started his new employment on the following Monday, May 28, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.]

The administrative law judge must follow the plain language of the statute. The weight of the evidence establishes that Mr. Rodriguez did indeed voluntarily quit the employment at Blue Sky Satellite Service, Inc., for the sole purpose of accepting new employment at Williams Wilbert Vault Works, Inc. The separation was without good cause attributable to the employer. Blue Sky Satellite Service will not be charged for benefits paid to Mr. Rodriguez. The separation from Blue Sky Satellite Service did not disqualify Mr. Rodriguez for unemployment insurance benefits. Mr. Rodriguez is eligible for benefits, provided he meets all other eligibility requirements.

DECISION:

The Agency representatives April 8, 2013, reference 02, decision is modified as follows. The claimant voluntarily quit the employment at Blue Sky Satellite Service, Inc., for the sole purpose of accepting new employment at Williams Wilbert Vault Works, Inc. The separation was without good cause attributable to the employer. Blue Sky Satellite Service will not be charged for benefits paid to the claimant. The separation from Blue Sky Satellite Service did not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs