

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER V ZAMORA**  
Claimant

**APPEAL NO. 09A-UI-00207-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KROHMER PLUMBING**  
Employer

**OC: 10/19/08 R: 01  
Claimant: Appellant (1-R)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The claimant, Christopher Zamora, filed an appeal from a decision dated January 2, 2009, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on January 28, 2009. The claimant provided a telephone number where he could be contacted and that number was dialed at approximately 10:54 a.m. The claimant answered but was using a cell phone contrary to the recommendation on the notice of the hearing. His cell phone dropped the call. The administrative law judge called the number again at 10:59 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without his participation unless he called the toll free number prior to the close of the record.

The claimant called the Appeals Section twice, once at 11:02 a.m. and once at 11:07 a.m. He was still using his cell phone and the call was disconnected prior to completion both times due to problems with the cell phone. The claimant did not participate in the hearing. The claimant had listed Chuck Walz as a witness but, when he was contacted, indicated he had not agreed to participate in the hearing on behalf of the claimant and did not wish to do so. As no subpoena had been issued to him, he did not participate in the hearing.

The employer, Krohmer Plumbing, participated by President Frank Krohmer, Vice President Kris Krohmer and was represented by Attorney Phil Redenbaugh.

**ISSUE:**

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

**FINDINGS OF FACT:**

Christopher Zamora was employed by Krohmer Plumbing from July 7, 2008 until July 18, 2008 as a full-time apprentice plumber. On July 18, 2008, he was on a job site in Storm Lake, Iowa, when a police car pulled up. He immediately ran out of the door and around the side of the building, and in the process of his flight, he tripped. Other employees saw him limping to his truck, which was parked next to the job trailer, but Mr. Zamora did not stop and report to the foreman.

The claimant apparently drove 43 miles to a hospital in Spencer, Iowa, when there was a hospital one and one-half blocks from the job site in Storm Lake, Iowa. On the morning of Monday, July 21, 2009, Foreman Chuck Walz reported the incident to Vice President Kris Krohmer, and shortly thereafter Mr. Zamora called her. She told him she was in the process of dispatching approximately 60 employees to various job sites and would call him back in an hour to discuss the situation with him. When she attempted to do so, she got no answer in spite of several attempts throughout the day.

On July 23, 2008, a bail bondsman contacted Ms. Krohmer and asked if the company would sign a bond to release the claimant from jail. She declined. Mr. Zamora was incarcerated for approximately 51 days. After that he did not contact the employer with a specific request to return to work but only "made vague threats" on the phone when he called the vice president.

The record was closed at 11:20 a.m. At 11:25 a.m. the claimant called again and requested to participate. He had received the notice of the hearing and chose to use a cell phone contrary to the recommendation against it stated on the notice. He did not make arrangements to use a land line at his local Workforce Center or any other land line.

The claimant may not be able and available for work due to medical and transportation problems. That issue was not addressed in the hearing as the claimant did not participate.

#### **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.

871 IAC 24.25(16) 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:

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

The claimant ran away from the work site on July 18, 2008, without notice to, or permission from, the job supervisor. This flight was prompted by the arrival of a police car at the job site. It may be fairly inferred the claimant was fleeing the police but was eventually arrested and incarcerated based on the fact a bail bondsman contacted the employer to see if it would sign a bond to release the claimant.

The claimant was in jail for some period of time and not available to work as a result. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

The next issue is whether the record should be reopened. The judge concludes it should not.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant received the notice of the hearing which contained a recommendation against the use of cell phones and elected to use one rather than make arrangements to use a land line. The phone disconnected several times and the administrative law judge was not able to reach him with a return call. The claimant's choice to use a cell phone implies acceptance of the risks involved with the use of such technology and the known danger of disconnection and other transmission problems. The claimant did not establish good cause to reopen the hearing and his request to reopen the hearing is denied.

The issue of whether the claimant is able and available for work should be remanded to UIS division for determination.

**DECISION:**

The representative's decision of January 2, 2009, reference 03, is affirmed. Christopher Zamora is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

The issue of whether the claimant is physically able and available for work, and whether he has transportation or the means to do work searches and travel to job sites, is remanded to the UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs