

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUAN J COLUNGA**  
Claimant

**APPEAL NO. 11A-UI-06909-H**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURGER KING**  
Employer

**OC: 01/02/11**  
**Claimant: Appellant (1)**

Section 96.5(1) - Quit

**STATEMENT OF THE CASE:**

The claimant, Juan Colunga, filed an appeal from a decision dated May 17, 2011, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on June 20, 2011. The claimant participated on his own behalf. The employer, Burger King, participated by Director of Operations Jim Snell, Assistant Night Manager Joe Ramirez, and Restaurant General Manager Jay Martin, and was represented by TALX in the person of David Williams.

**ISSUE:**

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

**FINDINGS OF FACT:**

Juan Colunga was employed by Burger King from January 9, 2008, until July 14, 2010, as a part-time crew member. On the evening of July 14, 2010, the restaurant was short-staffed and very busy. The manager on duty, Jordan Wheeler, went to look for the claimant, as he was not at his job duties. He found the claimant in the store room talking on his cell phone. He told Mr. Colunga to hang up and go back to work immediately. The claimant did not do so but walked toward the time clock. Mr. Wheeler told him that if he left, he would not have a job, but the claimant continued to leave and punched out.

The next day, Mr. Colunga did contact Mr. Ramirez and asked him for his job back. Mr. Colunga maintained that Mr. Wheeler had fired him by sending him home. Mr. Ramirez had already spoken with Mr. Wheeler and all of the other employees on duty at the restaurant that night. Their statements all agreed that the claimant punched out after Mr. Wheeler told him that if he did so, he would not have a job.

**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.

The claimant did have continuing work available to him had he elected to remain on duty as required. The manager on duty notified him that if he left without permission, he would be without a job, and he continued to do so. This is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

**DECISION:**

The representative's decision dated May 17, 2011, reference 02, is affirmed. Juan Colunga is disqualified and benefits are withheld until he has re-qualified by earning ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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