IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANDRE K BURDINE
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL NO. 11A-UI-07351-VS

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/03/11
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.6-3 – Right to In Person Hearing
871 IAC 26.14(7) – Failure to Follow Instructions on Hearing Notice

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 6, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, an in person hearing was scheduled for and held on June 30, 2011, in Davenport, Iowa. Claimant participated. The employer did not show up for the hearing and, therefore, did not participate in the hearing. The record consists of the testimony of Andre K. Burdine.

While the hearing was proceeding, the employer called the Appeals Section. The employer had not read the hearing notice and did not realize that this was an in-person hearing. The employer thought it could participate by telephone even though the notice clearly stated that the hearing was an in-person hearing in Davenport, Iowa at the Iowa Workforce Development Center. After the hearing was completed, the administrative law judge called the employer's representative. Sara Fielder said that she did not realize that the employer had to participate in person and that she called in to give her name and telephone number and was given a control number. There is no record of that call in the computer records that an administrative law judge would consult. There was no request prior to the hearing by the employer to participate by telephone. There was no request prior to the hearing to change it to a telephone hearing. The administrative law judge explained to the employer that failure to follow the notice requirements was not good cause to reopen the record.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether there is good cause to reopen the record based on the employer's failure to appear for the in person hearing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary employment agency. The claimant accepted an assignment to work at GPC, which is a manufacturing facility located in Muscatine, Iowa. He began his assignment on December 29, 2010. He first worked in the alcohol loading area and then was transferred to a production position in another area of the plant.

On or about February 5, 2011, the claimant was working on a machine with which he was unfamiliar. A GPC supervisor approached him at break time and told him that he did not think the claimant was "cut out" for production work. The claimant was asked for his hard hat and lockout tags. The claimant was unsure of what to do and went to see the GPC personnel manager. The manager told the claimant that he would give him a call. The claimant then went to Temp Associates, his employer, and reported that he had been dismissed. He was at Temp Associates within 15 minutes after leaving GPC. The person he spoke to said she would pass along the message.

The claimant waited two days and then called Chastity, who is an employee of Temp Associates in Davenport. Chastity set the claimant up with an interview, which did not work out, as the claimant was not qualified for the job. The claimant called Temp Associates repeatedly about jobs and either was told nothing was available or that he was on an available list.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence is uncontroverted in this case that the claimant did not quit his assignment. Rather, the employer's client terminated the assignment because a supervisor for the client did not think the claimant was "cut out" for production work. The employer, through its client, initiated the separation of employment. The claimant immediately reported that end of the assignment and after two days he contacted the employer in its Davenport office about another assignment. The employer did not participate in the hearing, and what requirements, if any, were applicable are not known. The administrative law judge notes, however, that if the employer did have a requirement that the claimant ask for another assignment within three working days after the end of the assignment, the claimant complied with that requirement.

The next issue is whether the record should be reopened because the employer failed to appear for an in person hearing.

Iowa Code section 96.6-3 provides:

> 3. Appeals. Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. A telephone or in-person hearing shall not be scheduled before the seventh calendar day after the parties receive notice of the hearing. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.
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> Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

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

Iowa law clearly provides that a party is entitled to an in-person hearing upon request. This in-person hearing request is granted unless an in person hearing would be impracticable given the distance to travel to the hearing site. This employer in this case is located in Muscatine, Iowa. It is not impracticable to travel from Muscatine to Davenport. The employer did not request a telephone hearing nor did the employer ask the administrative law judge if it could participate by phone. The employer assumed it could participate by telephone.

The employer's request to reopen the record is denied. The parties are responsible for reading the hearing notice and complying with the instructions. The notice sent to the employer was for an in-person hearing and there is nothing ambiguous in that notice about how the employer is to participate in the hearing. The administrative law judge concludes that the employer failed to follow the instructions in the hearing notice and that the record cannot be reopened.

DECISION:

The decision of the representative dated May 6, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw