

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW L SCHOTT
Claimant

APPEAL NO. 13A-UI-02038-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

OC: 01/13/13
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 13, 2013, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 18, 2013. Claimant participated. Employer responded to the hearing notice and did not participate as the representative refused to participate. Employer's representative quit on March 14. Employer called a fact-finding number to indicate that they were changing representatives. Employer did not use the number provided on the hearing notice. Employer called in eight minutes after the hearing start time to request participation. Employer failed to follow the five-minute rule by calling within five minutes when not called. Employer's failure to participate was due to a failure to read and follow instructions on the hearing notice.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 4, 2013. Claimant quit because he was having trouble getting paid his commission stipend. Claimant complained to employer to no avail. Claimant has not been paid his commissions to date of hearing.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was having trouble getting paid. This is good cause attributable to employer for a quit. Benefits allowed.

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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

DECISION:

The decision of the representative dated February 13, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. Employer's request to reopen the record is denied.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css