

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JERRY L HOGBERG  
12778 HWY 61  
BURLINGTON IA 52601**

**GTM ENTERPRISES INC  
GREAT RIVER TREE & LANDSCAPING  
11705 MILLDAM RD  
BURDLINGTON IA 52601**

**Appeal Number: 04A-UI-01125-B4T  
OC: 12/14/03 R: 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Jerry L. Hogberg appealed from an unemployment insurance decision dated January 22, 2004, reference 02, that held, in effect, the claimant voluntarily left his employment with GTM Enterprises, Inc., on July 18, 2003 to become self-employed. Unemployment insurance benefits were denied.

A telephone conference hearing was scheduled and held on February 19, 2004. Jerry L. Hogberg responded to the notice of hearing by providing a telephone number of where he could be contacted. A call placed to the number provided resulted in no answer and a message was left on the phone to advise the claimant to call in as soon as possible. The claimant did not

participate in the hearing held. Matt Smith, Vice President, participated on behalf of GTM Enterprises, Inc.

Official notice was taken of the unemployment insurance decision dated January 22, 2004, reference 02, together with the pages attached thereto (5 pages in all). A late call was received from the claimant, Jerry L. Hogberg approximately two hours after the conclusion of the hearing. The claimant did not provide substantial evidence that would require a new hearing or a rehearing.

#### FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Matt Smith, Vice President of GTM Enterprises, Inc., operating Great River Tree & Landscaping. Jerry L. Hogberg was employed as a regular part-time worker on January 3, 2003. During the tenure of the claimant's employment, he was never warned that his job was in jeopardy on any occasion.

Approximately two weeks prior to July 18, 2003, the claimant held a conversation with Matt Smith, Vice President. The claimant indicated he was interested in buying the Great River Tree & Landscaping business owned and operated by GTM Enterprises, Inc. The claimant needed time to find out if a relative would loan him the money to buy the business.

The claimant was given a leave of absence on or about July 1, 2003 because of personal problems involving a divorce. The claimant worked on several occasions after said date until July 18, 2003, which was his last day at work on the job. The claimant again met with Matt Smith, Vice President at his home and indicated he was interested in buying the business. The claimant needed additional time to make a determination. The claimant thereafter contacted the employer and Matt Smith, Vice President was unable to contact the claimant. The claimant is believed to be operating Foster Tree Service, a business of his own.

#### 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(19) provides:

(19) The claimant left to enter self-employment.

871 IAC 24.25(27) provides:

(27) The claimant left rather than perform the assigned work as instructed.

The evidence in the record clearly establishes that the claimant left his employment to become self-employed and was presently operating Foster Tree Service. Work was available to the claimant had he chosen to remain in his employment with GTM Enterprises, Inc. Under such circumstances, Jerry L. Hogberg voluntarily left his employment with GTM Enterprises, Inc.,

without good cause attributable to the employer within the intent and meaning of Iowa Code Section 96.5-1 and the foregoing sections of the Iowa Administrative Code.

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 unemployment insurance decision dated January 22, 2004, reference 02 is affirmed. Jerry L. Hogberg voluntarily left his employment with GTM Enterprises, Inc., without good cause attributable to the employer and benefits are denied until such time as he has requalified under the provisions of the Iowa Employment Security Law.

kjf/b