

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLET C CURTIS

Claimant

APPEAL NO: 10A-UI-10868-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAFFING PROFESSIONALS LLC

Employer

OC: 05/16/10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Marlet C. Curtis (claimant) appealed a representative's July 28, 2010 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Staffing Professionals, L.L.C. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:00 a.m. on September 20, 2010. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. The employer responded to the hearing notice and indicated that Stacy Navarro would participate as the employer's representative. When the administrative law judge contacted the employer for the hearing, Ms. Navarro agreed that the administrative law judge should make a determination based upon a review of the available information. The record was closed at 10:13 a.m. At 10:27 a.m., the claimant called the Appeals Section and requested that the record be reopened. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant received the hearing notice prior to the September 20, 2010 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the claimant directly contacted the Appeals Section was on September 20, 2010, 27 minutes after the scheduled start time for the hearing. The claimant had not read all the information on the hearing notice, and had assumed that the Appeals Section would initiate the telephone contact even without a response to the hearing notice.

The employer is a temporary employment firm. The claimant began taking assignments with the employer on May 28, 2009. Her last day on an intermittent assignment was September 3,

2009. The assignment ended because she was a no-call/no-show for scheduled work on the assignment on September 29 and November 12, 2009, and she did not recontact the employer for further work until April 15, 2010; under the employer's policies she was deemed to have abandoned her position.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. Id. Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The first time the claimant called the Appeals Section for the September 20, 2010 hearing was after the hearing had been closed. Although the claimant intended to participate in the hearing, she failed to read or follow the hearing notice instructions and did not contact the Appeals Section prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's July 28, 2010 decision (reference 02) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 7, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css