IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KENNETH C REED
Claimant

HEYL TRUCK LINES INC
Employer

APPEAL NO. 10A-UI-01389-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 05/17/09
Claimant: Appellant (4)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.26-6-b – Work-Related Illness or Injury
871 IAC 26.14(7) – Late Call
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Kenneth C. Reed (claimant) appealed a representative's January 22, 2010 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2010. The claimant participated in the hearing and was represented by Chad Thompson, attorney at law. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. The record was closed at 10:44 p.m. At 4:21 p.m., the employer called the Appeals Section and requested that the record be reopened. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing record be reopened?

Did the claimant voluntary quit without good cause attributable to the employer?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant received the hearing notice prior to the March 8, 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 employer directly contacted the Appeals Section was on March 8, 2010, more than six hours after the scheduled start time for the hearing. The employer's representative had the hearing noted on his calendar but had neglected to call the Appeals Section to register his name and number for the hearing, as work had been busy the prior week.

The claimant started working for the employer on June 25, 2009. He worked full-time as an over-the-road / long-haul truck driver. His last day of work was September 12, 2009. On July 6 he had fallen while at the employer's terminal. His neck bothered him at the time and he did report the incident to the employer, but he attempted to treat it himself for several weeks. When he continued to suffer pain, he indicated he needed to get in to see a doctor. He was routed home, arriving September 12. He made an appointment for September 16, at which time his doctor took him off work pending further examination and treatment. It was determined that the fall had caused damage to the vertebrae or discs in the claimant's neck, and he underwent surgery on December 4.

On December 23 the claimant was released by his doctor for light duty, no more than ten pounds of lifting. That week he was in contact with the employer, but was told the employer did not "have anything like that (kind of work) here." The employer subsequently indicated that it considered the claimant's employment to have ended. The claimant has subsequently been fully released, as of March 4, 2010.

The claimant established an unemployment insurance benefit year effective May 17, 2009. He filed an additional claim effective December 20, 2009.

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 employer called the Appeals Section for the March 8, 2010 hearing was after the hearing had been closed. Although the employer intended to participate in the hearing, the employer 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 employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

If the claimant voluntarily leaves his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Leaving employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician with notice to the employer is recognized as grounds that are good cause for quitting. Iowa Code § 96.5-1-d. For the quit to be attributable to the employer, factors or circumstances directly connected with the employment must either cause or aggravated the claimant's condition so as to make it impossible for the employee to continue in employment; the claimant "must present competent evidence showing adequate health reasons to justify termination [and] before quitting [must] have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated." 871 IAC 24.26(6)b.

The claimant has satisfied these requirements. The claimant's light duty restrictions were due to an injury connected to the work. The employer was unable or unwilling to provide reasonable accommodation in order to retain the claimant's employment, and considered the claimant's employment ended. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's current base period began January 1, 2008 and ended December 31, 2008. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's January 22, 2010 decision (reference 03) is modified in favor of the claimant. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw