

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J NOTZ
Claimant

APPEAL NO: 14A-UI-01126-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRAD DEERY MOTORS
Employer

**OC: 12/29/13
Claimant: Respondent (5)**

Section 96.5-2-a – Discharge
871 IAC 24.26(21) – Involuntary Leaving
871 IAC 26.14(7) – Request to Reopen

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 22, 2014, reference 01, that held the claimant voluntarily quit with good cause attributable to the employer on December 27, 2013, and benefits are allowed. A telephone hearing was held on February 20, 2014. The claimant participated. Nick McCutcheon, Sales Manager, and Matt Meyer, participated for the employer.

ISSUE:

Whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on May 25, 2011 and last worked for the employer as a full-time salesman on December 27, 2013. The claimant and employer had a heated discussion on December 27. When claimant wanted to end it to attend to a customer sales appointment he was told that was not going to happen. He was later told to remove his personal belongings and leave work at the end of day. He leaving was monitored by the employer. Claimant concluded he was forced to leave work.

The employer designated two persons to be called at a telephone number provided on the UI Appeals C2T control system. The employer was called and the named representatives were not available nor an alternate person.

An employer representative called in more than one-half hour after the scheduled hearing time. The representative thought the employer office manager was going to call Appeals and provide a cell phone number to be contacted for the hearing. There is no record of such call.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer request to reopen the record and re-schedule the hearing is denied. It was an employer internal communication problem that caused the employer representative who wanted to participate not called at an alternate cell phone number. This not a good cause to grant the employer request.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.26(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The administrative law judge concludes the claimant was discharged for no act of misconduct on December 27, 2013. Asking the claimant to resign or leave employment is an involuntary employment separation. The employer did not participate in this hearing and offer evidence of job disqualifying misconduct.

DECISION:

The department decision dated January 22, 2014, reference 01, is modified without effect. The employer discharged claimant for no act of misconduct on December 27, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs