

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN T SWANSON
Claimant

APPEAL NO. 11A-UI-12987-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KT OF CLEAR LAKE LLC
Employer

OC: 07/24/11
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, KT of Clear Lake LLC (KT), filed an appeal from a decision dated September 29, 2011, reference 02. The decision allowed benefits to the claimant, Ryan Swanson. After due notice was issued, a hearing was held by telephone conference call on October 27, 2011. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Director of Operations Janelle Vickers.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Ryan Swanson was employed by KT from June 1 until June 12, 2011 as a full-time team member. New owners had purchased the business on June 1, 2011, and began to institute changes in order to address some of the problems the store had been having. On June 12, 2011, the store manager texted Director of Operations Janelle Vickers and said she and two other employees, including Mr. Swanson, would not be returning to work and the employer should find someone else to open the store the next day.

The claimant never reported back to work, although continuing work was available to him. He did not contact Ms. Vickers to discuss his employment and only came back in to pick up his last paycheck some time later.

Ryan Swanson has received unemployment benefits since filing a claim with an effective date of July 24, 2011.

The record was closed at 8:06 a.m. At 8:10 a.m., the claimant called and requested to participate. The claimant received the hearing notice prior to the October 27, 2011 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 claimant maintained he had called the Appeals Section to provide his phone number but had no control number to verify any call had been made.

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.

The claimant quit because he refused to continue working for the new owners. Continuing work was available to him had he not quit. As he did not participate, the claimant did not provide any specific reasons for his decision to quit and did not meet his burden of proof to establish he had good cause attributable to the employer for quitting. He is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.
 - a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.
 - b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.
 - (2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

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.

The first time the claimant called the Appeals Section for the October 27, 2011 hearing was after the hearing had been closed. Although the claimant may have intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and did not contact the Appeals Section as directed 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.

DECISION:

The representative's decision of September 29, 2011, reference 02, is reversed. Ryan Swanson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw