

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW A WESLEY
Claimant

APPEAL NO: 14A-UI-04360-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALNUT BREWERY INC
Employer

OC: 03/23/14
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
871 IAC 26.14(7) – Request to Reopen Hearing

STATEMENT OF THE CASE:

The claimant appealed a representative's April 23, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because his employment separation was for disqualifying reasons. A telephone hearing was held on May 15, 2014. The claimant responded to the hearing notice, but did not answer his phone when he was called for the hearing. RoxAnne Rose and E.J. Nau appeared on the employer's behalf.

After the employer had been excused and the hearing was closed, the claimant responded to the administrative law judge's message. The claimant asked that the hearing be reopened. Based on the claimant's request to reopen the hearing, the administrative file and the law, the administrative law judges denies the claimant's request to reopen the hearing and concludes he is not qualified to receive benefits.

ISSUE:

Did the claimant establish good cause to have the hearing reopened?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant to work as a cook on July 13, 2013. The employer's policy informs employees that the employer considers an employee to have abandoned their employment if they have three unreported absences.

The claimant's last day of work was August 26, 2013. The employer no longer considered him an employee as of September 2. As of September 2, 2013, the claimant had three unreported absences.

The claimant received the hearing notice informing him a telephone hearing would be held on May 15, 2014, at 8:30 a.m. Before May 15, the claimant contacted the Appeals Bureau and provided the phone number to contact him for the hearing. The claimant was called at 8:30 a.m. on May 15. The claimant did not answer his phone. The administrative law judge left a message for the claimant to contact the Appeals Bureau immediately if he was going to participate at the hearing. The claimant did not respond to the administrative law judge's message until 8:55 a.m. By the time the claimant contacted the Appeals Bureau, the hearing had been closed and the employer's witnesses had been excused.

The claimant explained that he was leaving the hospital with his daughter at 8:30 a.m. He knew he missed a phone call, but waited to call the Appeals Bureau. The claimant made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. 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. 871 IAC 26.14(7)(b) and (c).

Although the claimant denied he forgot about the 8:30 a.m. hearing, the administrative law judge does not find this assertion credible. If the claimant had not forgotten about the hearing, it is difficult to understand why he was leaving the hospital at the time his hearing was scheduled. Since the claimant received information that his hearing was scheduled at 8:30 a.m., it is difficult to understand why he waited more than 20 minutes before he called the Appeals Bureau. Since the Appeals Bureau's phones do not allow parties to leave a message, if the claimant made any attempt to call the Appeals Bureau by leaving a message, he did not call the Appeals Bureau phone number. By the time the claimant returned the administrative law judge's call, the hearing had been closed and the employer had been excused. The claimant did not establish good cause to reopen the hearing. The claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. Based on the employer's policy, the employer considered the claimant to have voluntarily quit by abandoning his employment when he did not call or report for work for three days after August 26, 2013. As of September 2, 2013, the employer no longer considered the claimant an employee because he had abandoned his employment. As of September 2, 2013, the claimant is not qualified to receive benefits.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's April 23, 2014 determination (reference 01) is affirmed. The claimant voluntarily quit his employment by failing to call or report to work for three days after August 26, 2013. As of September 2, 2013, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs