IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MICHAEL L PETTEY
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SHINEWAY INC
PO BOX 321
MASON CITY IA 50402

Appeal Number: 05A-UI-08073-DWT
OC: 06/26/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Michael L. Pettey (claimant) appealed a representative's August 3, 2005 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Shineway, Inc. (employer) would not be charged because the claimant voluntarily quit his employer for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2005. The claimant responded to the hearing notice by providing a phone number in which to contact him for the hearing. This phone number was called for over five minutes, but was always busy. Daniel Lloyd, the president, appeared on the employer's behalf.

The claimant contacted the Appeals Section after the hearing had been closed and the employer had been excused. The claimant requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and

the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

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

FINDINGS OF FACT:

The claimant has been working on and off for the employer for the last five to six years. The claimant works a custodian.

On Memorial Day while the claimant was at home, he injured himself moving items from his residence to the curb for a pickup. When the claimant reported to work on May 31, he told employees he hurt his back at home. The claimant left work early on June 1 to see his doctor. The claimant has not been back to work since June 1, 2005. The claimant told the employer his doctor told the claimant he could not return to work as a janitor and needed to look for another job. The claimant has not presented the employer with any documentation that prevents him from working for the employer as a janitor or that the clamant has any work restrictions.

As of the date of the hearing, the employer still has the claimant's job available. If the claimant provides documentation from his doctor that he is able to work as janitor, the employer has work for the claimant to do. The claimant established a claim for unemployment insurance benefits during the week of June 26, 2005.

The claimant contacted the Appeals Section at 1:47 p.m. for the 1:00 p.m. scheduled hearing. The claimant asserted he was at home, but the phone did not ring for the 1:00 p.m. hearing. The claimant did not contact the Appeals Section until 1:47 p.m. because he thought the hearing was scheduled at 1;30 p.m. instead of 1:00 p.m. When he did not get a call by 1:40 p.m., he looked at his hearing notice again and realized he had been mistaken about the time of the hearing. The claimant requested that the hearing be reopened.

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).

The parties are responsible for providing a telephone number in which the party can be contacted for the scheduled hearing. The claimant's assertion that the phone did not ring, is correct because when the phone number he provided was called it was constantly busy. Even though a phone had been "zapped" by electricity before the fact-finding interview, which was

several weeks prior to August 23, the claimant acknowledged this phone had been replaced. The administrative law judge does not find the claimant's assertion that the call did not go through because of electrical problems that occurred weeks before the hearing credible.

The problem in his case is that the claimant thought the hearing was at 1:30 p.m. instead of 1:00 p.m. As a result of his error, the claimant did not take reasonable steps to participate in the hearing by providing the phone number at which he could be reached for the 1:00 p.m. hearing. Under these facts, the claimant did not establish good cause to reopen the hearing. The claimant's request 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. The employer did not and has not discharged the claimant. The claimant initiated his employment separation after he hurt his back at his residence.

The law presumes a claimant voluntarily quits without good cause when he leaves because of an injury that is not caused or aggravated by the employment or fails to provide competent evidence that continued employment would result in serious health problems for the claimant. 871 IAC 24.26(6)(b). Even though the claimant told the employer a doctor had advised him to look for other employment, the claimant's statement alone does not constitute competent evidence. The facts do not establish that the reasons for claimant's employment separation qualify him to receive unemployment insurance benefits. Therefore, as of June 26, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The claimant's request to reopen the rehearing is denied. The representative's August 3, 2005 decision (reference 02) is affirmed. The claimant initiated his employment separation for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 26, 2005. 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.

dlw/pjs