

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS A NAPLES
Claimant

APPEAL NO. 09A-UI-08804-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

**Original Claim: 04/12/09
Claimant: Appellant (1/R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Marcus A. Naples (claimant) appealed a representative's June 10, 2009 decision (reference 04) that concluded he was not qualified to receive benefits, and the account of Dillard's Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 7, 2009. The claimant responded to the hearing notice, but was not available for the hearing. Lori Flahive, an assistant manager, appeared on the employer's behalf.

The claimant contacted the Appeals Section at noon for the 8:00 a.m. hearing. 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 benefits?

FINDINGS OF FACT:

The claimant started working for the employer on September 16, 2008. At the time of hire, the employer explained that while the claimant was in training, he would receive an hourly wage. After the claimant completed his training, he would be a full-time commissioned employee.

During his employment, the claimant frequently reported to work late. The employer had no understanding the claimant was thinking about ending his employment. On December 19 or 20, 2008, the claimant called the employer to report he was not returning to work. The claimant did not go back to work.

On June 30, 2009, the claimant followed the hearing instructions and contacted the Appeals Section to provide the phone number to contact him for the July 7 hearing. The phone number was his mother's phone and the claimant was not available for the scheduled hearing. A few days before the hearing, the claimant learned he was scheduled to work at 5:00 a.m. the morning of July 7. The claimant went out-of-town the weekend of July 4 and his cell phone battery went dead. The claimant did not return to his home until Monday night. When the claimant went to work on July 7, he did not bring with him the phone number of the Appeals Section to call to see if the hearing could be postponed.

The claimant's mother answered the phone at 8:00 a.m. and left him a message to contact the Appeals Section. The claimant contacted the Appeals Section at noon for the 8:00 a.m. hearing. The claimant acknowledged it was his fault he had not called to postpone the hearing and for not being available for the hearing. The claimant asked that the hearing be reopened so he could present his testimony.

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 claimant established that he intended to participate in the hearing when he called on June 30 and provided the phone number at which to contact him for the hearing. After the claimant obtained a job and learned he was scheduled to work at the time of the hearing, he did not take reasonable steps to postpone the hearing. The claimant may have forgotten about the scheduled hearing when he did not take the Appeals Section phone number to work with him. Since the claimant did not take reasonable steps to continue the hearing to a time he was available to participate, the claimant did not establish good cause to reopen the hearing. His 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 attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a.

Based on the evidence presented during the hearing, the claimant quit his employment. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2. Since the claimant was not available for the scheduled hearing, and he did not give the employer any reason for quitting, the evidence does not establish that he quit for reasons that qualify him to receive benefits.

If the claimant quit because he became a commissioned employee after he completed his training, the law presumes a claimant has quit without good cause when he quits because he is not satisfied with the wage he agreed to when he became employed. 871 IAC 24.25(13). The claimant is not qualified to receive benefits as of December 21, 2008.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's June 10, 2009 decision (reference 04) is affirmed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 21, 2008. 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. An issue of whether the claimant has been overpaid any benefits he may have received since December 21, 2008, is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw