

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ABIGAIL J BELGARDE**  
Claimant

**APPEAL NO: 13A-UI-02200-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BIAGGI'S RISTORANTE ITALIANO LLC**  
Employer

**OC: 01/13/13**  
**Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Leaving  
Section 17A.12-3 – Non-appearance of Party  
871 IAC 25.8(5) – Decision on the Record  
871 IAC 26.14(7) – Late Call

**STATEMENT OF THE CASE:**

Biaggi's Ristorante Italiano, L.L.C. (employer) appealed a representative's February 13, 2013 decision (reference 01) that concluded Abigail J. Belgarde (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 10:30 a.m. on March 21, 2013. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. The claimant responded to the hearing notice and indicated that she would participate in the hearing. When the administrative law judge contacted the claimant for the hearing, she agreed that the administrative law judge should make a determination based upon a review of the available information. The record was closed at 10:40 a.m. At 6:15 p.m., the employer sent a fax to the Appeals Section and requested that the record be reopened. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Should the hearing record be reopened? Did the claimant voluntarily quit for a good cause attributable to the employer?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

As evidenced by the fact that when the employer sent in its fax to the Appeals Section at 6:15 p.m., the employer had received the hearing notice prior to the March 21, 2013 hearing. The instructions inform the parties that if the party does not call the Appeals Section at the telephone number indicated to provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. In its fax on the evening of March 21

the employer indicated that it had “called in and faxed appeal info in February and March 6th.” However, the employer did not have a control number, which the Appeals Section issues to each party who calls in for a hearing to verify that they have called. An examination of the call-in logbooks maintained by the Appeals section shows there is no entry of a call from the employer, either on March 6 or any other date after the issuance of the hearing notice on February 28, 2013. Neither had the employer complied with the instructions that are routinely given to parties who do call in as to what they should do if they do not get a call at the designated hearing time. The administrative law judge concludes that the employer never directly contacted the Appeals Section by phone, nor did it make any other contact with the Appeals Section until nearly eight hours after the scheduled time for the hearing on March 21. The administrative law judge concludes that the employer had not read all the information on the hearing notice, and had assumed that the Appeals Section would initiate the telephone contact even without a telephone response to the hearing notice.

The claimant started working for the employer on October 20, 2012. She worked full time as a server. Her last day of work was January 1, 2013. She voluntarily quit work as of that date. Her reason for leaving was harassment and an intolerable work environment.

Prior to December 31, the claimant had been having problems with a bartender who repeatedly used vulgar language towards her, such as “What the f - - - are you looking at?”, “I am not f - - - ing talking to you” and calling her a “b - - - -.” At least as early as November 20, 2012, she reported this to three different supervisors and managers (Izzo, Eric, and Ally). One told her he “could not do anything about it,” and other told her that she would just “have to figure it out” on her own.

On the evening of December 31 there were multiple incidents in which the bartender made the same type of remarks to the claimant; then, at the end of the night when the bartender was cashing the claimant out, he threw her change across the counter at her. As a result of this final incident and the employer’s failure to take action on her prior complaints, the claimant quit.

#### **REASONING AND CONCLUSIONS OF LAW:**

The Iowa Administrative Procedures Act § 17A.12-3 provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. ... If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

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.

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Intolerable or detrimental working conditions are good cause for quitting attributable to the employer. 871 IAC 24.26(4). The claimant has demonstrated that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). The employer knew or should have known that the claimant was experiencing detrimental or intolerable treatment, but took no action. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). Benefits are allowed.

**DECISION:**

The representative's February 13, 2013 decision (reference 01) is affirmed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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