

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FRANCES V LEWIS**  
Claimant

**APPEAL NO: 11A-UI-01637-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MKMB RESTAURANT PARTNERS LLC  
BURGER KING**  
Employer

**OC: 01/02/11  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving  
871 IAC 26.14(7) – Late Call

**STATEMENT OF THE CASE:**

Francis V. Lewis (claimant) appealed a representative's January 28, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from MKMB Restaurant Partners L.L.C. / Burger King (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2011. The claimant received the hearing notice and responded by calling the Appeals Section on March 9, 2011. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, she did not participate in the hearing. Julie Anderson appeared on the employer's behalf. The record was closed at 9:15 a.m. At 10:04 a.m., the claimant called the Appeals Section and requested that the record be reopened. Based on the evidence, the arguments of the employer, 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?

**FINDINGS OF FACT:**

The claimant received the hearing notice prior to the March 10, 2011 hearing. The instructions inform the parties that they are to be available at the scheduled day and time for the hearing, and if the party is not available, the administrative law judge may proceed and make a decision on other available information. The hearing notice specified that the hearing would be held at 9:00 a.m. Iowa time. The claimant was not available when the administrative law judge sought to contact her at that time, and did not recontact the Appeals Section to seek to participate in the hearing until about an hour after the scheduled start time for the hearing. The claimant had forgotten about the time difference between Iowa and Arizona, and had believed that the hearing would be held at 9:00 a.m. Arizona time, which is 10:00 a.m. Iowa time.

The claimant started working for the employer on or about June 1, 2009. She worked part time (approximately 32 hours per week) as a crew member at the employer's Fort Dodge, Iowa restaurant. Her last day of work was on or about October 19, 2010. On or about October 8 she had given a notice of resignation to the restaurant manager, Ms. Anderson. Her last day of work was supposed to be October 22, but she was a no-call, no-show for her last three days of work. She indicated to Ms. Anderson that she was quitting because she was moving out of the area.

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

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.8(3), (4), (5); 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. Id.

Although the claimant intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and was not available at the specified Iowa time for the hearing. The rules 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)c. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

Turning to the separation issue, 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.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause attributable to the employer.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Quitting in order to move to another locality is not a good cause attributable to the employer. 871 IAC 24.25(2). The claimant has not satisfied her burden. Benefits are denied.

**DECISION:**

The representative's January 28, 2011 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of October 19, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs