

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN M KOCH**  
Claimant

**APPEAL NO. 12A-UI-05681-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN MEMORIAL HOSPITAL**  
Employer

**OC: 04/22/12**  
**Claimant: Appellant (1)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The claimant, John Koch, filed an appeal from a decision dated May 11, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 7, 2012. The claimant participated on his own behalf. The employer, Allen Memorial Hospital (AMH), did not provide a telephone number where a witness could be contacted and did not participate.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

John Koch was employed by AMH from March 15, 2000 until April 25, 2012 as a full-time housekeeper. He had received progressive discipline for attendance and was on the final step prior to discharge.

On April 16, 2012, he gave a two-week notice to his supervisor, Adella, stating his last day of work would be April 30, 2012. He quit because he was afraid he would be fired due to his poor attendance. Mr. Koch worked through April 24, 2012, when he requested to leave early. He was granted permission to go home, but the next day the housekeeping manager, Glenn, called and told him he did not need to return to work.

The record was closed at 10:08 a.m. At 10:15 a.m., the employer called and requested to participate. The employer received the hearing notice prior to the June 7, 2012 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the employer directly contacted the Appeals Section was on June 7, 2012, after the scheduled start time for the hearing. 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 response to the hearing notice.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(28) and (38) provide:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

.....

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The claimant quit because of the disciplinary actions he had been given for absenteeism. This is not good cause attributable to the employer under the provisions of the above Administrative Code section. He was willing to work out his notice period and did work more than half of it. The employer released him earlier than the proposed last day of work. The claimant is therefore eligible for benefits for the one-week period ending April 28, 2012.

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.

The first time the employer called the Appeals Section for the June 7, 2012 hearing was after the hearing had been closed. Although the employer may have intended to participate in the hearing, the employer failed to read or follow the hearing notice instructions and did not contact the Appeals Section as directed prior to the hearing. 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. The employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

**DECISION:**

The representative's decision of May 11, 2012, reference 01, is affirmed. John Koch is disqualified effective April 29, 2012, and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw