

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH M MCGUIRE
Claimant

APPEAL NO. 13A-UI-10716-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BICKFORD SENIOR LIVING GROUP LLC
Employer

OC: 08/18/13
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 12, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on November 18, 2013. Claimant participated. Employer did not participate. The employer was scheduled to participate through Mary Keen. Ms. Keen was not available when called to begin the hearing and did not return the administrative law judge message until after the hearing record had been closed. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a community relations director beginning on August 8, 2012 through August 20, 2013 when she voluntarily quit. The claimant quit due to the treatment she received from her direct supervisor, Mary Keen. Ms. Keen would make statements to the claimant including "you are a waste of my time," "why are you working here," and "you need to be on your best behavior," and "you have not proven yourself." The claimant found the statements to be inaccurate and belittling. Often times Ms. Keen would complain when the claimant brought to her attention the complaints from family members of the clients. The complaints were Ms. Keen's responsibility to address. Ms. Keen also systematically cut the claimant off from access to the marketing conference calls that she should have been involved in.

Mary Keen called in to participate in the hearing and said she had forgotten it was taking place. Failure to recall that a hearing is taking place is not good cause to reopen the record.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer's request to reopen the hearing should be granted or denied.

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.

Although the employer may have intended to participate in the hearing, the employer failed to be available when the administrative law judge contacted her to begin the hearing because she forgot the hearing was going to take place. 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 employers' request to reopen the hearing is denied.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

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 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant was routinely cut out of participation in marketing calls when she should have been participating. Ms. Keen made it impossible for her to participate when she was told the calls were cancelled. Ms. Keen spoke to the claimant in a way that no employer would permit employees to speak to them. Ms. Keen's actions and the way she treated the claimant as detailed in the claimant's exhibit and during her testimony created an intolerable work environment giving rise to good cause attributable to the employer for the claimant quitting the job. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The September 12, 2013, reference 01, decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs