IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JEFFREY M YATES
Claimant

A-LERT
Employer

APPEAL NO. 13A-UI-13283-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/03/13
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 26, 2013, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on December 18, 2013. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate. The respondent called after the hearing record had been closed, and had not followed the hearing notice instructions pursuant to Iowa Admin. Code r. 871-26.14(7)a-c.

ISSUES:

Should the hearing record be reopened?
Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The parties were properly notified of the scheduled hearing on this appeal. The respondent failed to provide a telephone number at which a representative could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The respondent received the hearing notice prior to the hearing. The instructions inform the parties that if the party does not contact the Appeals Bureau 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 respondent directly contacted the Appeals Bureau was on December 18, 2013, after the scheduled start time for the hearing and after the record had been closed. The respondent had not read the information on the hearing notice, and had assumed that the Appeals Bureau would initiate the telephone contact even without a response to the hearing notice.

Claimant was employed full-time as a welder/millwright and was separated from employment on November 6, 2013. Two weeks earlier claimant told supervisor Josh Buckler that his wife had a doctor's appointment for a pregnancy routine first ultrasound (not a first pregnancy) on November 6 and he would need to leave early. Buckler said he did not think it would be a problem. Claimant continued to remind him but Buckler had not talked to site superintendent LeRoy Kramer until that day and Kramer said he could not leave because he was out of paid time off (PTO). Claimant called Kramer to ask him to reconsider. He had no written warnings or problems getting time off with short notice in the past. Kramer told him he would be fired if he left because of a history of poor prior attendance. Claimant left work early anyway.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the respondent'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.

The first time the respondent called the Appeals Bureau for the hearing was after the record had been closed. Although the respondent may have intended to participate in the hearing, it failed to read or follow the hearing notice instructions and did not contact the Appeals Bureau 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 respondent did not establish good cause to reopen the hearing. Therefore, its request to reopen the hearing is denied.

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily quit the employment without good cause attributable to employer.

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.,* (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

Since claimant had been warned if he left early contrary to instructions to finish his shift, his chosen action by leaving early is evidence of an intention to quit and an action carrying out that intent. This was without good cause attributable to the employer. Even if the separation is considered a discharge rather than a voluntary quitting of employment, claimant's decision to walk off the job instead of staying to work the remainder of the shift after having been told that if he left early he would be discharged, was a deliberate action contrary to the employer's instruction. The employer's instruction was reasonable since claimant was out of PTO and the reason he wanted to leave early was not for an urgent reason. Claimant's insubordinate action was misconduct. Benefits are denied whether the separation was a quit or a discharge.

DECISION:

The November 26, 2013, (reference 01) decision is affirmed. Claimant was not discharged but voluntarily quit the employment without good cause attributable to employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs