

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN S HOTZ
Claimant

APPEAL NO: 14A-UI-03141-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH EDUCATION WEST LLC
Employer

OC: 05/05/13

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

SDH Education West, L.L.C. (employer) appealed a representative's March 13, 2014 decision (reference 01) that concluded Karen S. Hotz (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Tom Weiseler appeared on the employer's behalf. The record was closed at 2:24 p.m. At 2:34 p.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 April 15, 2014 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 claimant directly contacted the Appeals Section was on April 15, 2014, 34 minutes after the scheduled start time for the hearing. The claimant 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. When she did not receive a call, she attempted to call the Appeals Section, but she had written down an incorrect phone number for the employer. By the time she located and called the correct number for the Appeals Section, it was 2:34 p.m. and the record was closed.

The claimant started working for the employer in August 2009. She worked part time (about 15 hours per week) as a dining room maintenance worker in the employer's Cedar Rapids, Iowa college food service. Her last day of work was February 21, 2014.

The claimant called in absences due to weather on February 24 and February 25. She was a no-call, no-show on February 26, February 27, and February 28. On February 28 the employer's manager called the claimant's phone number and left a message inquiring as to whether the claimant was going to be returning to the employment. When the employer did not hear any further from the claimant, it concluded that she had voluntarily quit by job abandonment and proceeded to seek and hire a replacement. No further contact was made by the claimant until on March 18, when she contacted the employer's manager and asked if she could have her job back. However, by that date the employer had already filled the position previously worked by the claimant.

The claimant established a claim for unemployment insurance benefits effective May 5, 2013. She reactivated the claim by filing an additional claim effective February 23, 2014. A fact-finding interview was held with a Claims representative on March 12, 2014. The available information indicates that no person participated directly in the fact-finding interview on behalf of the employer, but that the employer submitted written information for consideration by the Claims representative. That information was not distributed to the parties to this hearing so that a determination could be made as to whether that documentation satisfies the requirements of the rule for written participation. The claimant has received unemployment insurance benefits after the separation.

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 26.14(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.* Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The first time the claimant called the Appeals Section for the April 15, 2014 hearing was after the hearing had been closed. Although the claimant intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and did not contact the Appeals Section 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 claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

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 intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

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. The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. Participation, which can include by written participation under certain circumstances, is defined in 871 IAC 24.10. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment is subject to collection under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's March 13, 2014 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of February 23, 2014, 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. The matter is remanded to the Claims Section for investigation and determination of the overpayment issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs