IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 06A-UI-05748-RT
OC: 05-07-06 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

MING T VONG
1510 1/2 NEBRASKA ST
SIOUX CITY IA 51105-1239

HY-VEE INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

HY-VEE INC
C/O TALX UC EXPRESS
3799 VILLAGE RUN DR #511
DES MOINES IA 50317

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Ming T. Vong, filed a timely appeal from an unemployment insurance decision dated May 24, 2006, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on June 22, 2006, with the claimant not participating. Although the claimant had called in a telephone number where he purportedly could be reached for the hearing, when the administrative law judge called that number at 3:07 p.m. he reached a voice mail identifying the number as that of the claimant and of that which had been dialed by the administrative law judge. The Appeals Section had obtained an interpreter to assist the claimant in the hearing. Using the interpreter, the administrative law judge left a message for the claimant that he was going to proceed with the hearing and if the claimant wanted to participate in the hearing the claimant would need to call before the hearing

was over and the record was closed. The hearing began when the record was opened at 3:12 p.m. and ended when the record was closed at 3:22 p.m. and the claimant had not called during that time. Tracy Huff, Human Resources Manager, and Shune Lee, manager of the Chinese food department, participated in the hearing for the employer, Hy-Vee, Inc. The employer was represented by David Williams of TALX UCM Services, Inc. Karee White, Human Resources Coordinator, sat in on the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

The claimant called the Appeals Section at 3:40 p.m. Because the administrative law judge was not then able to talk to the claimant he informed the staff to tell the claimant that the administrative law judge would call him back. The administrative law judge called the claimant at 2:20 p.m. on June 23, 2006 and spoke to the claimant. The claimant informed the administrative law judge that he had received the notice for the hearing and had properly called in a telephone number where he could be reached for the hearing. However, at the time for the hearing the claimant was at the Wal-Mart store. Initially the claimant knew the hearing was at 3:00. However, after calling in a telephone number where he could be reached for the hearing he lost the notice and thought the hearing was at 3:30 p.m. The claimant did receive the voice mail message left by the administrative law judge at 3:07 p.m. The administrative law judge informed the claimant that he would treat his telephone call as a request to reopen the record and reschedule the hearing. The administrative law judge explained to the claimant that the administrative law judge would do one of two things; if the claimant deserved a new hearing, the administrative law judge would reschedule a hearing and conduct a new hearing; if the administrative law judge concluded that the claimant does not deserve a new hearing, the administrative law judge would do a decision based upon the evidence presently before the judge and without the claimant's input. The administrative law judge informed the claimant that if he did a decision it would be in English and the claimant would need to get assistance in reading it. The administrative law judge further informed the claimant that if the decision was against the claimant he could appeal the decision. The claimant does speak some English and understood the administrative law judge.

The question before the administrative law judge is whether the claimant has demonstrated good cause to reopen the record and reschedule the hearing made after the hearing had been held and the record closed. Although the following rule addresses a situation in which a party does not respond to a notice of appeal and telephone hearing until after the record has been closed and the hearing completed, the administrative law judge nevertheless believes that the following rule is relevant here.

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 administrative law judge is constrained to conclude here that the claimant has not demonstrated good cause to reopen the record and reschedule the hearing and therefore the administrative law judge concludes that the claimant does not deserve and is not entitled to another hearing. The claimant received the notice of hearing and knew at that time that the hearing was at 3:00 p.m. The claimant responded to the notice of appeal by calling in a telephone number where he could be reached for the hearing. It was the proper telephone number. The administrative law judge called that number for the hearing. However, the claimant was at the Wal-Mart store. After receiving the notice and calling in a telephone number for the hearing, the claimant lost the notice believing it was in his vehicle and then thought the hearing was at 3:30 p.m. However, the notice was clear that the hearing was at 3:00. Losing the notice and then forgetting the time for the hearing is not good cause to reopen the record and reschedule the hearing. Accordingly, the administrative law judge concludes that the claimant has not demonstrated good cause to reopen the record and reschedule the hearing after the hearing had been held and the record closed and therefore the administrative law judge concludes that the claimant's request to reopen the record and reschedule the hearing should be and it is hereby, denied.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time Chinese food cook from December 18, 2003 until he voluntarily quit effective April 20, 2006. Approximately two weeks before April 20, 2006, the claimant approached the employer's witness, Tracy Huff, Human Resources Manager, and told her that he was no longer going to work for the employer and that he was going to work two more weeks and then quit. He gave no reason to Ms. Huff. Ms. Huff believed that the claimant had obtained another job in Omaha, Nebraska. The claimant was not at the time facing discharge and no one had told him that he was going to be discharged. His work was generally satisfactory. The claimant had never made any complaints to the employer about his working conditions and work remained available for him had he remained at the employer. The employer's manager, Shune Lee, manager of the Chinese food department, did tell the claimant that he was displeased with the claimant's performance but did not tell the claimant that he was discharged nor did he say that the claimant would be discharged. The claimant then told Mr. Lee that he was quitting and then the claimant quit effective April 20, 2006.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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(3)(21)(28)(33) provides:

> 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:
>
> (3) The claimant left to seek other employment but did not secure employment.
>
> (21) The claimant left because of dissatisfaction with the work environment.
>
> (28) The claimant left after being reprimanded.
>
> (33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The employer's witness, Tracy Huff, Human Resources Manager, credibly testified, and the administrative law judge concludes, that the claimant left his employment voluntarily effective April 20, 2006. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6(2). The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for his quit.

Ms. Huff credibly testified that the claimant informed her two weeks before the effective date of his quit that he was no longer going to work for the employer after a two-week notice period. The claimant gave no reason but Ms. Huff thought the claimant had found another job in Omaha, Nebraska. Ms. Huff credibly testified that the claimant was not discharged nor was he facing imminent discharge and that his work was generally satisfactory. Ms. Huff also testified that the claimant had made no complaints to her about his working conditions. Ms. Huff finally testified that work remained available for the claimant had he not quit. The claimant's supervisor, Shune Lee, manager of the Chinese food department, credibly testified that he did tell the claimant that he was displeased with some of the claimant's performance but testified credibly that he did not discharge the claimant nor did he tell the claimant that he would be discharged. The statements by Mr. Lee were in the nature of a reprimand but leaving work

voluntarily because of a reprimand is not good cause attributable to the employer. There was some evidence that perhaps the claimant was dissatisfied with his work environment or that he felt that his job performance was not to the satisfaction of the employer but these are not good cause attributable to the employer when the employer has not requested that the claimant leave and continued work was available as it was here. Finally, there was some evidence that the claimant may have left work to seek other employment but there is no evidence that he had other employment at the time he quit and, in fact, the claimant filed for unemployment insurance benefits and reported no earnings so it appears that the claimant did not quit his employment to immediately take another job. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable, or detrimental or that he was subjected to a substantial change in his contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about his working conditions. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

DECISION:

The representative's decision of May 24, 2006, reference 02, is affirmed. The claimant, Ming T. Vong, is not entitled to receive unemployment insurance benefits, until, or unless, he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

kkf/pjs