

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYSON T WATT**  
Claimant

**APPEAL NO. 10A-UI-04239-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRI-STATE NURSING ENTERPRISES INC**  
Employer

**Original Claim: 12/27/09  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(1) – Transportation  
871 IAC 26.14(7) – Late Call/Request to Re-open

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 4, 2010, reference 01, that held he voluntarily quit without good cause attributable to his employer on January 20, 2010, and that denied benefits. A telephone hearing was held on April 29, 2010. The claimant did not participate. Janelle Townsend, Staffing Operations Manager, and Robin Petrick, former Staffing Specialist, participated for the employer.

**ISSUE:**

Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer as a part-time C.N.A. from about November 1, 2009 to November 24. The claimant turned down further work shift assignments due to transportation issues. The claimant stated during the department fact-finding interview on January 20, 2010 he had quit his job to look for other employment.

The claimant called in after the close of the record. He had no control number to verify any pre-hearing request to participate.

**REASONING AND CONCLUSIONS OF LAW:**

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.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The claimant failed to establish that he called in prior to the hearing with a control number, and requested to participate. The claimant called well after the close of the record.

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(1) 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:

- (1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to his employer effective January 20, 2010, due to transportation issues.

The claimant quit his job after denying work shift assignments due to transportation.

**DECISION:**

The department decision dated March 4, 2010, reference 01, is affirmed. The claimant voluntarily quit without good cause on January 20, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw