IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ROBERT M GRESER
Claimant

KRAJICEK INC
Employer

APPEAL NO: 07A-UI-00976-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/17/06 R: 01
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Robert M. Greser (claimant) appealed a representative's January 17, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Krajicek, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held at 1:00 p.m. on February 12, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice and call the Appeals Section to provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. The record was closed at 1:44 p.m. At 2:58 p.m., the employer called the Appeals Section and requested that the record be reopened; additional information regarding the employer's receipt of the hearing notice and its reasons for failing to participate in the hearing was obtained by the administrative law judge from the employer on February 13, 2007.

Based on the evidence, the arguments of the claimant, 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 and the hearing rescheduled? Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The notice of the February 12, 2007 was mailed to the employer's official address of record on January 30, 2007. The employer received the hearing notice in early February. 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 employer directly contacted the Appeals Section was on February 12, 2007, nearly two hours after the scheduled start time for the hearing. While the hearing notice had been received in the employer's office in early February, the employer did not provide a copy of the actual hearing notice to the person who was to be handling the hearing on the day of the hearing. The employer had not read all the information on the hearing

notice, and had assumed that the Appeals Section would automatically initiate a telephone contact to the employer even without a response to the hearing notice.

The claimant started working for the employer on or about December 1, 2005. He worked full time as an over-the-road truck driver in the employer's trucking operation. His last day of work was on or about December 15, 2006.

During particularly the claimant's last six months of employment, he had expressed concerns to the employer about needing to have the minimum 34 hours of down time after having been on the road for seven days or 70 hours, in order to run legal in compliance with federal DOT requirements. He was also concerned about the number and amount of new fines the employer had been creating and assessing against his earnings. On a run in early December the claimant had refused to run outside the federal DOT regulations, and as a result was late on a delivery, for which the employer assessed him a fine. The claimant informed the employer he would not accept future trips if he were not given sufficient time to make the delivery while still running legal.

On or about December 15 the employer summoned the claimant for a trip to a destination in South Carolina, a trip of approximately 16 hours of straight driving time. The claimant could only drive a maximum of 11 hours under the federal regulations after which he would need a 10-hour rest period, and on December 15 he had already been awake for a number of hours before the dispatcher contacted him, so he could not have even driven 11 hours that night under the federal regulations. The claimant still agreed to take the run, but when he arrived at the terminal, he was told that he would need to wait approximately three hours for the truck. By the time the claimant would have been able to leave, he would not have been able to make the delivery by its deadline and yet driven within the DOT regulations. Since the employer could not change the delivery time, and given his prior experience being fined for making a late delivery when he insisted on driving only as allowed under the federal regulations, the claimant decided to quit.

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.

The first time the employer called the Appeals Section for the February 12, 2007 hearing was after the hearing had been closed. Although the employer intended to participate in the hearing, the employer 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 employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code § 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(2), (3), (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:
>
> (2) The claimant left due to unsafe working conditions.
>
> (3) The claimant left due to unlawful working conditions.
>
> (4) The claimant left due to intolerable or detrimental working conditions.

The claimant has established that a reasonable person would find the employer's work conditions were unsafe, unlawful, detrimental or intolerable. O'Brien v. EAB, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). Benefits are allowed.

DECISION:

The representative's January 17, 2007 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs