

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF A RUNNELLS
Claimant

APPEAL NO: 12A-UI-09677-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HADLEY HARDWARE INC
BEN FRANKLIN PLUMBING**
Employer

**OC: 07/15/12
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
§ 17A.12-3 – Non-appearance of Party
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Jeff A. Runnells (claimant/appellant) appealed a representative's August 6, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Hadley Hardware, Inc. / Ben Franklin Plumbing (employer). The claimant/appellant requested that the hearing be held in-person. Notices of hearing were mailed to the parties' last-known address of record for an in-person hearing to be held at 2:00 p.m. on November 5, 2012. The claimant/appellant failed to respond to the hearing notice and appear at the time and place set for the hearing, and therefore did not participate in the hearing. The employer responded to the hearing notice by appearing at the time and place for the hearing through attorney Tara Hall, and one in-person witness, Silvia Hadley. When the claimant did not appear for the hearing, the employer agreed that the administrative law judge should make a determination based upon a review of the available information. Based on the appellant's failure to participate in the hearing, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed report at the scheduled time and place for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

The claimant started working for the employer on or about June 1, 2007. He worked full time as an apprentice plumber. His last day of work was July 5, 2012.

On July 3 the employer received a complaint from an upset customer regarding the claimant. The employer arranged a meeting between the claimant and manager Hadley on July 5 to discuss issues and complaints including the issues related to the July 3 service call. Hadley had prepared a reprimand advising him that he needed to change his attitude and comply with company rules. During the meeting the claimant became upset and walked out. He unloaded his personal gear from his work truck, and turned in his cell phone and gas card. When he asked Hadley if she was firing him, she responded, "No," she just needed to discuss the complaint and other issues. The claimant proceeded to leave the premises.

The claimant asserted that Hadley was requiring him to sign a statement obliging him to repay certain amounts of incurred damages to the employer. However, the only statement the employer was presenting to the claimant for signature was the reprimand regarding the customer complaint, which had no provisions for any payments.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 17A.12-3 provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. ... If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for

appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that his separation was not “voluntary” as he had not desired to end the employment; he argues that it was the employer's action or inaction which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). 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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee believes he has been or will be discharged, but the employer has not told the employee that he in fact has been discharged. 871 IAC 24.25.

The claimant left because of being given a reprimand even though he was told he was not being discharged; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's August 6, 2012 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 5, 2012, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css