

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRENT J LEE**  
Claimant

**APPEAL NO. 09A-UI-09581-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MCDONALDS**  
Employer

**Original Claim: 05/31/09  
Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

McDonalds (employer) appealed a representative's June 30, 2009 decision (reference 01) that concluded Trent J. Lee (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant quit for reasons that qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2009. The claimant responded to the hearing notice, but did not answer his phone for the 9:00 a.m. hearing. A message was left for the claimant to contact the Appeals Section immediately. Wendy Hall, the restaurant manager, appeared on the employer's behalf.

Around 12:20 p.m., the claimant called the Appeals Section and requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is there good cause to reopen the hearing?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 25, 2008. The claimant worked as a full-time crew person and grill closer. In mid-May 2009, the claimant walked out of a manager's meeting. When the claimant left, he appeared mad or upset.

The employer later learned some employees had been goofing around. The claimant fell and another employee had his arm around the claimant's neck.

The employer disciplined the employee who had his arm around the claimant's neck. The employer called the claimant to see if he would be at work the next as scheduled. Although the claimant indicated he would report to work as scheduled, he did not. The employer

unsuccessfully attempted to set up times to meet with the claimant to discuss the incident. After the claimant left the manager's meeting, he did not return to work again.

The claimant established a claim for benefits during the week of May 31, 2009. He has filed for and received benefits since May 31.

The claimant received the hearing notice and properly responded by contacting the Appeal Sections on July 10 and provided the phone number to contact him for the hearing. On July 20 the claimant was at the Cedar Rapids hospital with relatives all day. The claimant did not return from Cedar Rapids until 3:00 a.m. on July 21. On June 20 and 21, the claimant forgot about his unemployment insurance hearing scheduled at 9:00 a.m. on July 21. The claimant did not get home until 3:00 a.m. on July 21. The cell phone the claimant was using for the hearing was on vibrate and he did not hear it when he was called for the hearing. When the claimant woke up around noon, he listened to the message left on the cell phone and called the Appeals Section. The claimant requested that hearing be reopened.

### **REASONING AND CONCLUSIONS OF LAW:**

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. 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. 871 IAC 26.14(7)(b) and (c).

When the claimant called in his phone number, he intended to participate in the hearing. Unfortunately, the claimant forgot about the hearing on July 20 and when he returned home at 3:00 a.m. on July 21. Forgetting about a scheduled hearing does not amount to good cause to reopen the hearing. Therefore, the claimant's request is denied.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When the claimant did not return to work after leaving during a manager's meeting, he voluntarily quit his employment. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant quits with good cause if he leaves employment because of unsafe or intolerable working conditions. 871 IAC 24.26(2), (4). The evidence indicates the claimant left work after he fell or was pushed to the floor and another employee had his arm around the claimant's neck. When the claimant left work, the employer knew he was upset but did not know why he was upset or angry. After the claimant left work, the employer learned some employees had been goofing around, which resulted in the claimant falling to the floor. The evidence does not indicate if the claimant was one of the employees goofing around or if he was just a victim. The employer disciplined the employee who had his arm around the claimant's neck. The employer attempted to talk to the claimant, but the claimant did not return to work and did not meet with the employer so the employer could address and resolve issues that occurred during the manager's meeting in mid-May.

Since the manager's meeting incident appears to be an isolated incident and the employer disciplined an employee and attempted to meet with the claimant to address and resolve his concerns, the facts do not establish that the claimant worked in unsafe or intolerable working conditions. The evidence indicates the claimant quit his employment for compelling reasons,

but these reasons do not qualify him to receive benefits. As of May 31, 2009, the claimant is not qualified to receive benefits.

Since the claimant has filed for and received benefits since May 31, 2009, the issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's June 30, 2009 decision (reference 01) is reversed. The claimant quit his employment, but he quit for reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of May 31, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw