IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHANE D BURK
Claimant

CARGILL MEAT SOLUTIONS CORP
Employer

APPEAL NO: 10A-UI-05311-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/22/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Shane D. Burk (claimant) appealed a representative's April 1, 2010 decision (reference 05) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Cargill Meat Solutions Corporation (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 11:00 a.m. on May 27, 2010. The claimant received the hearing notice and responded by calling the Appeals Section on April 26, 2010. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, that phone number was not in service; therefore, the claimant did not participate in the hearing. The employer responded to the hearing notice and indicated that Jessica Sheppard would participate as the employer's representative. When the administrative law judge contacted the employer for the hearing, Ms. Sheppard agreed that the administrative law judge should make a determination based upon a review of the available information. The record was closed at 11:10 am. At 11:11 a.m., the claimant called the Appeals Section and requested that the record be reopened. Based on a review of the information in the administrative file 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? 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 claimant received the hearing notice prior to the May 27, 2010 hearing. The instructions inform the parties that they are to be available at the specified time for the hearing, and that if they cannot be reached at the time of the hearing at the number they provided, the judge may decide the case on the basis of other available evidence. The claimant provided a phone

number for the hearing that was a correct number but was not in service at the time for the hearing. He had an alternative telephone number, but he had failed to provide that number for him to be called at the time for the hearing or by the time the record was closed at 11:10 a.m.

The claimant started working for the employer on March 22, 2009. He worked full time as a general laborer/production worker on the second shift. His last day of work was February 10, 2010. He called in sick on February 11 and February 12, but was a no-call/no-show for work on February 15, February 16, and February 17, as well as additional days thereafter. The employer has a three-day, no-call/no-show job abandonment/voluntary quit policy. The claimant assumed he was discharged because he had been given a second written warning for attendance on January 20, 2010, and he understood that he was nearing the level for discharge if he had additional unexcused absences. However, he was not informed by anyone with the employer that in fact he had been or was about to be discharged due to his absences on February 11 and February 12.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. Id. Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The first time the claimant provided the Appeals Section with an operating telephone number for the May 27, 2010 hearing was after the hearing had been closed. Although the claimant intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and did not provide the Appeals Section with a valid telephone number 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 claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

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 the separation was not "voluntary" as he had not desired to end the employment; he argues that had he returned to work he would have been discharged for his attendance 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. However, an intent to quit can be inferred in certain circumstances. For example, a three-day

no-call/no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as failing to report for work because of a belief the employee has been or is about to be discharged, when the employer has not told the employee that he in fact has been or is about to be discharged. 871 IAC 24.25.

The claimant ceased calling or reporting for work because he assumed he was discharged, but was never told by the employer that he was 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. The claimant 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 of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). Quitting because a reprimand or other discipline has been given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's April 1, 2010 decision (reference 05) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 12, 2010, 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/css