

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN WAKE

Claimant

APPEAL NO. 07A-UI-06245-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHWEST SERVICES

Employer

**OC: 05/27/07 R: 01
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Northwest Services (claimant) appealed an unemployment insurance decision dated June 14, 2007, reference 01, which held that Justin Wake (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 10, 2007. The claimant provided a telephone number but was not available when that number was called for the hearing and, therefore, did not participate. The employer participated through Dennis Thompson, Manager. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker for this temporary agency from March 29, 2007 through May 22, 2007. He was assigned to work at Rem Manufacturing Company and there was no end date for this assignment. The claimant stopped reporting to work and never contacted the employer after May 22, 2007. The employer subsequently learned that the claimant had failed a drug test taken on May 22, 2007. The claimant reportedly admitted to the manufacturing company that he had used drugs but the employer knew nothing about the situation. The claimant was not discharged by the employer but simply did not contact the employer to request any additional assignments.

The record in the case closed at 10:11 a.m. on July 10, 2007. The claimant contacted the Appeals Section at approximately 10:18 a.m. on that same date. He reported that his girlfriend was using the telephone at the time of the hearing. The claimant requested the record be reopened.

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. If a party responds to a hearing notice after the record has been closed, 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). The claimant did not participate in the hearing because his girlfriend was using the phone. The request to reopen the record is therefore denied because the party making the request has not established good cause for his failure to participate.

The next issue to be determined is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to call or return to work for the employer. Regardless of what happened with the employer's customer, the claimant had not been discharged from the employer. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated June 14, 2007, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,440.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css