

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RICK D CARLSEN
2327 QF LN
MADRID IA 50156

HELPING HANDS
TEMPORARY SERVICES INC
27 N CENTER ST
MARSHALLTOWN IA 50158-4912

Appeal Number: 05A-UI-08648-DWT
OC: 07/17/05 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.1(113) - Layoff

STATEMENT OF THE CASE:

Helping Hands Temporary Services, Inc. (employer) appealed a representative's August 16, 2005 decision (reference 01) that concluded Rick D. Carlsen (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 7, 2005. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer.

After the hearing closed and the claimant had been excused, the employer contacted the Appeals Section. The employer made a request to reopen the hearing. Based on the

employer's request to reopen the hearing, the record, 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 unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer is a temporary firm that provides casual temporary employees to Barilla. The employer regularly assigned the claimant to work at Barilla for about two years. Most recently, the employer assigned the claimant to a job at Barilla that was to end on July 3.

The claimant experienced transportation problems on July 2. The claimant's vehicle had radiator problems. As a result of transportation problems, the claimant was late for work on July 2, and he was unable to get to work as scheduled on July 3. The claimant notified the employer he was unable to work on July 3.

Barilla was shut down for the Fourth of July. The claimant contacted the employer about another assignment at Barilla after the July 4 holiday or temporary shutdown. The employer did not have any work to assign to the claimant. Since July 4, Barilla has not needed as many temporary workers, so the employer has not called the claimant to work. The claimant did not file a claim for unemployment insurance benefits until the week of July 17, 2005.

The employer received the hearing notice shortly after it was mailed on August 24, 2005. The employer noted the time and date of the hearing on calendars, but forgot to contact the Appeals Section. The first time the employer called the Appeals Section was after 8:00 a.m. on September 7. By the time the employer called, the hearing had been closed and the claimant had been excused. The employer made a request to reopen the hearing.

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).

The employer's request to reopen the hearing is denied. Even though the employer may have forgotten to call the Appeals Section for various reasons, failure to follow the hearing instructions does not constitute good cause to reopen the hearing.

A claimant is not qualified to receive unemployment insurance benefits if a claimant voluntarily quits employment without good cause, or an employer discharged him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The record established the claimant

did not finish his last job assignment that was to end on July 3. The claimant did not work on July 3 because he was unable to report to work. The claimant, however, did not quit. There is no evidence the employer discharged the claimant for being unable to work on July 3, 2005.

Even though the claimant did not quit, this situation is somewhat analogous to 871 IAC 24.25(40). This regulation states a claimant is not disqualified from receiving benefits for quitting in advance of an announced layoff. This regulation specifically states a claimant shall not be denied benefits as of the effective date of the scheduled layoff. In this case, the claimant knew Barilla was closed for at least part of the week of July 3 for the Fourth of July holiday. When the claimant contacted the employer after this temporary shutdown, the employer did not have any work to assign to the claimant. As of July July 17, 2005, when the claimant established his claim for benefits, he was unemployed because the employer did not have work to assign to him. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for seasonal employment. 871 IAC 24.1(113). As of July 17, 2005, the claimant was unemployed for nondisqualifying reasons because the employer did not have any work to assign him. Therefore, the claimant is eligible to receive benefits as of July 17, 2005.

DECISION:

The employer's request to reopen the hearing is denied. The representative's August 16, 2005 decision (reference 01) is affirmed. The claimant's unemployed status as of July 17, 2005, is the result of nondisqualifying reasons. Therefore, as of July 17, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw