

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN C DUNLAP
Claimant

APPEAL NO: 10A-UI-04864-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/24/10
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
871 IAC 24.26(8) – Leaving to Care/Family Member
871 IAC 26.14(7) – Request to Re-open

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 22, 2010, reference 01, that held he voluntarily quit employment with good cause attributable to the employer on April 23, 2009, and benefits are denied. A telephone hearing was held on May 8, 2010. The claimant, and his Attorney, Lisa Jones, participated. The employer did not participate.

ISSUES:

Whether the claimant voluntarily quit with good cause attributable to the employer.

Whether the employer request to re-open the record should have been granted.

FINDINGS OF FACT:

The administrative law judge having heard the claimant's testimony, and having considered the evidence in the record, finds: The claimant was hired by the employer as a casual employee to work as a cashier/clerk and bag/carry-out groceries on April 16, 2009. After the claimant was absent from work for some scheduled days, he offered the employer an apology by stating he was helping his father care for their mother who was suffering from dementia. An employer representative offered that the claimant could be taken off the schedule, leave work, and return when things had settled down. The claimant accepted the employer offer. About one month later, the claimant returned to work, spoke to the same representative, and offered to continue employment. The employer advised the claimant there was no work available.

An employer representative called in after the close of the record inquiring why she had not been called for the hearing. When told that there was no call-in by the employer to participate, she stated that another representative was supposed to have done so. The employer had no control number to establish a pre-hearing call-in.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The administrative law judge concludes the employer failed to offer a good cause to re-open the record. A failure to follow the notice instructions is not a good reason to re-open the record.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(8) provides:

The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

The administrative law judge concludes that the claimant left employment to care for his ill mother on April 23, 2009, and the employer failure to re-employ the claimant one month later, is a voluntary quit with good cause attributable to the employer.

The employer suggested to the claimant that he be removed from his work schedule so he could leave in order to care for his ill mother. The claimant returned one month later after his mother had recovered, and the employer failed to offer him work.

DECISION:

The department decision dated March 22, 2010, reference 01, is reversed. The claimant voluntarily quit with good cause attributable to the employer effective April 23, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css