IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ADAM R MATHISON
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO: 11A-EUCU-00701-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/13/09
Claimant: Appellant (1)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(15) – Temporary Employment
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Adam R. Mathison (claimant) appealed a representative's August 30, 2011 decision (reference 05) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Advance Services, Inc. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on September 30, 2011. The claimant received the hearing notice and responded by calling the Appeals Section on September 16, 2011. 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, the claimant was not available; therefore, he did not participate in the hearing. The record was considered closed at 9:10 am. At 12:36 p.m., the claimant called the Appeals Section and requested that the record be reopened. Based on a review of the available information 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?

FINDINGS OF FACT:

The claimant received the hearing notice prior to the September 30, 2011 hearing. The instructions inform the parties that they are to be available at the scheduled day and time for the hearing, and if the party is not available, the administrative law judge may proceed and make a decision on other available information. The claimant did not recontact the Appeals Section to seek to participate in the hearing until almost three and a half hours after the scheduled start time for the hearing. The claimant failed to be available at the scheduled day and time set for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Contrary to the recommendation on the hearing notice instructions, the claimant's phone was a cell phone. The claimant was not available when the

administrative law judge called the phone for the hearing because his phone was not working at that time.

The employer is a temporary staffing agency. The claimant began an assignment through the employer on March 2, 2011. He worked full time as a general laborer at the employer's business client through June 16, 2011. The assignment ended that date because the business client deemed the assignment to be completed. The business client did not inform the employer of the completion of the assignment, and the claimant did not contact the employer within three days of the end of the assignment to either report the ending of the assignment or to seek reassignment; the employer did not learn of the ending of the assignment until about a week later. The claimant was on notice of the requirement in the employer's policy that he must seek reassignment as required by the employer's policies to avoid being considered to be a voluntary quit.

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 claimant was not available for the September 30, 2011 hearing until 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 was not available at the scheduled time and day for 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.

An employee of a temporary employment firm who has been given proper notice of the requirement can be deemed to have voluntarily quit his employment with the employer if he fails to contact the employer within three business days of the ending of the assignment in order to notify the employer of the ending of the assignment and to seek reassignment. Iowa Code § 96.5-1-j. The intent of the statute is to avoid situations where a temporary assignment has ended and the claimant is unemployed, but the employer is unaware that the claimant is not working and could have been offered an available new assignment to avoid any liability for unemployment insurance benefits. 871 IAC 24.26(15).

Here, the employer was not aware that the business client had ended the assignment. The claimant did not inform the employer of the ending of the assignment and seek reassignment within the three days required. Under the statute and rule, he is deemed to have voluntarily quit the employment.

DECISION:

The representative's August 30, 2011 decision (reference 05) is affirmed. The claimant voluntary quit his employment without good cause attributable to the employer. 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 the claimant is then otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs