

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALBERT I DUNN

Claimant

APPEAL NO. 06A-UI-09893-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

D & D WEST HOMES INC

Employer

**OC: 09/17/06 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

D & D West Homes, Inc. (employer) appealed a representative's October 6, 2006 decision (reference 01) that concluded Albert I. Dunn (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled on October 24, 2006. There was no indication either party responded to the hearing notice.

When the employer did not receive a call to participate in the hearing, the employer attempted to contact the Appeals Section at 10:14 a.m. No one answered the employer's call. In an attempt to reach the Appeals Section, the employer then called the local office around 10:30 p.m. The local office contacted the Appeals Section at 10:40 p.m. After learning the employer called, the administrative law judge called the employer. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, the administrative 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?

FINDINGS OF FACT:

The claimant started working for the employer on June 22, 2006. The claimant worked full time. The claimant's crew leader has been a personal friend of the claimant for several years. Shortly after the claimant started working, he received a minor injury and reported this to Carla West, an owner. West explained the procedure the claimant needed to follow if he ever injured himself at work again.

On August 23, the claimant fell on his back. His crew leader/friend asked if he had nice fall. The claimant did not initially believe he injured himself when he fell. The claimant reported to work as usual on August 24. The claimant felt some soreness on August 24. On August 24, the claimant told his crew leader/ friend that he should probably see a chiropractor.

On Friday, August 25, the claimant had problems moving and did not report to work. The claimant did not call and notify the employer he was unable to work. The claimant went to a chiropractor on August 28.

The claimant's crew leader/friend called the claimant subsequent to August 24 and left messages for the claimant to return his call. The claimant owed money to his friend. When the claimant did not recall any of his friend's calls, the friend sent the claimant a text message. The text message was not a complimentary description of the claimant.

The claimant did not contact Carla or Don West, the owners, to report he had injured himself at work and needed medical treatment. The claimant did not report any problems he had with his friend/crew leader. The claimant did not return to work after August 24, 2006.

A notice was mailed to the parties on October 12, 2006. The employer understood that after receiving a notice, the employer must contact the Appeals Section to provide the phone number and the name of the person participating on the employer's behalf. Carla West believed she had called the Appeals Section prior to the October 24 scheduled hearing but could not find a control number. The Appeals Section reviewed phone logs that are maintained and did not find an entry to verify that the employer had called prior to the hearing.

The first time the facts indicate the employer called for the October 24 hearing was 10:14 a.m. for a 10:00 a.m. hearing. Unfortunately, when the employer called at 10:14 a.m., no one answered the call. The first time the employer talked to anyone about the October 24 hearing was about 10:30 a.m. when West successfully talked to a representative at the local Workforce office. West requested the hearing be reopened because she believed she had called the Appeals Section prior to the scheduled 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 facts do not support the employer's contention that the employer followed the hearing instructions by calling the Appeals Section prior the scheduled hearing. As a result, the employer did not establish good cause to reopen the hearing.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code section 96.5-1. In this case the employer or at least anyone with hiring and firing authority, the Wests, did not discharge the claimant. The facts indicate the claimant quit by abandoning his job when he failed to return to work after August 24. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code section 96.6-2.

Since the claimant did not participate in the hearing, it is not known why he did not return to work after August 24, 2006. While the claimant may have had compelling reasons for not returning to work, the facts do not establish that the quit was for reasons that qualify him to receive unemployment insurance benefits. The facts do not establish that the claimant considered his friend's request to repay a loan as a reason for not returning to work. As of September 17, 2006, the claimant is not qualified to receive unemployment insurance benefits.

The claimant has not received any unemployment insurance benefits since he filed his claim for benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's October 6, 2006 decision (reference 01) is reversed. The claimant quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of September 17, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs