

**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**

**JUSTIN L GARDNER  
400 LINDALE DR #17  
MARION IA 52302**

**SPEE-DEE DELIVERY SERVICE INC  
710 SE CREEKVIEW DR  
ANKENY IA 50021**

**Appeal Number: 06A-UI-05211-DWT  
OC: 04/20/06 R: 03  
Claimant: Respondent (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Spee-Dee Delivery Services, Inc. (employer) appealed a representative's May 15, 2006 decision (reference 01) that concluded Justin L. Gardner (claimant) was qualified to receive benefits because he voluntarily quit his employment with good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 1, 2006. The claimant responded to the hearing notice and provided a phone number in which to contact him for the hearing. This phone number was called, but no one answered the phone. Ron Watson, the human resource director, appeared on the employer's behalf.

At 2:30 p.m., the claimant contacted the Appeals Section and requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the evidence, the arguments

of the parties, 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?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Before the claimant started working for the employer on September 26, 2005, Watson told the claimant the employer had a busy and slow season. As a result, the claimant could work anywhere between 10 and 39 hours a week. The claimant started the job during the employer's busy season. The employer's slow season begins in the spring.

Prior to his employment separation, the claimant's hours of work had been decreased because of the employer's workload. Instead of working 39 hours a week, the claimant worked an average of 20 hours a week. The employer had more work available in the morning if the claimant had expressed an interest in working in the morning. The claimant started his shift at 4:30 p.m.

April 13, 2006, was the claimant's last day of work. The employer had the claimant scheduled to work after April 13, but the claimant did not report to work again. The claimant did not tell the employer why he was quitting. The claimant's wife who works for the employer brought in the claimant's uniforms.

The claimant established a claim for unemployment insurance benefits during the week of April 30, 2006. The claimant filed claims for the weeks ending May 6 through 27, 2006. The claimant received a total of \$666.00 in benefits for these weeks.

The claimant properly responded to the hearing notice and provided the Appeals Section with a phone number in which to contact him. The claimant was called at the phone number he provided. The claimant knew his phone rang at noon, but he did not answer it. The claimant's caller ID noted an identified caller was calling the claimant. The claimant does not answer a call when it is an unknown number because he does not like talking to telemarketers. When the claimant had his fact-finding interview, his caller ID indicated Iowa Workforce was calling him.

The claimant did not have his hearing notice with him on June 1. The claimant had his unemployment insurance handbook and called the phone number listed in the handbook. The claimant did not initially contact the Appeals Section. The phone number the claimant called indicated all the representatives were busy. When the claimant contacted the Appeals Section at 2:30 p.m. for the noon hearing, the employer had been excused and the hearing had been closed. The claimant 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 claimant asserted he was available for the hearing and even heard his phone ring for the scheduled noon hearing. The claimant did not answer his phone because his caller identification system identified the call as an unknown caller and the claimant does not want to talk to telephone solicitors. The claimant has the right to answer his phone when he wants to. The claimant did not act in a reasonable or responsible way on June 1 when he intentionally failed to answer his phone at noon when he knew he had a noon hearing. The claimant made himself unavailable by failing to answer his phone. The claimant did not establish good cause to reopen the hearing. The claimant's request is denied.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts establish the claimant quit his employment by abandoning it after April 13, 2006.

When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. The law presumes a claimant quits with good cause when he quits because of a substantial change in his employment. 871 IAC 24.26(1). The facts establish that before the claimant started working he knew the employer had busy and slow times of the year. The employer explained that as a result of the employer's workload the claimant could work anywhere from 10 to 39 hours a week. When the claimant quit, his hours had been significantly reduced because the employer's business was slow. Even though the claimant's hours had been reduced because of the workload, he knew or should have known his hours would be reduced at certain times of the year. The claimant did not talk to the employer about quitting because of the slowdown in work. The evidence indicates the claimant could have worked more hours if he had been willing to work in the morning. The claimant did not tell the employer why he was quitting; he just stopped reporting for work.

The claimant may have had compelling reasons for quitting or abandoning his job. His reasons do not, however, qualify him to receive unemployment insurance benefits. As of April 30, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not qualified to receive benefits for the weeks ending May 6 through 27, 2006. The claimant has been overpaid \$666.00 in benefits he received for these weeks.

#### DECISION:

The claimant's request to reopen the hearing is denied. The representative's May 15, 2006 decision (reference 01) is reversed. The claimant voluntarily 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 April 30, 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. The claimant is not legally entitled to receive benefits for the weeks ending May 6 through 27, 2006. The claimant has been overpaid and must repay a total of \$666.00 in benefits he received for these weeks.

dlw/kkf