

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY B MABBITT**

Claimant

**APPEAL NO. 09A-UI-07536-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARNOLD MOTOR SUPPLY**

Employer

**Original Claim: 04/19/09  
Claimant: Respondent (2/R)**

Section 96 .5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Arnold Motor Supply (employer) appealed a representative's May 13, 2009 decision (reference 01) that concluded Mary B. Mabbitt (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2009. The claimant responded to the hearing notice, but was not available when she was called for the hearing. Steve Swartz, the manager, appeared on the employer's behalf.

After the hearing had been closed and the employer's witness had been excused, the claimant called the Appeals Section to participate in the hearing. She 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:**

Did the claimant establish good cause to reopen the hearing?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in November 2007. The claimant worked as a full-time delivery driver. When the claimant started her employment, she received a copy of the employer's rules that informed her the employer considered an employee to have voluntarily quit if the employee did not call or report to work for three consecutive days.

When the claimant was on week's vacation in September 2008, her husband contacted the employer in the middle of her vacation to report she was in the hospital. The claimant's husband did not know if she would be able to return to work when her vacation ended that week. The claimant did not return to work or contact the employer after her vacation ended.

The employer received information the day after the claimant's husband indicated she was in the hospital that she was actually driving with her husband.

When the claimant did not return to work after her scheduled vacation and no one contacted the employer again on her behalf, the employer considered the claimant to have voluntarily quit her employment by abandoning it. On September 25 or October 2, the employer sent the claimant a letter indicating she was no longer considered an employee because she had not called or reported to work for three consecutive scheduled days.

The claimant established a claim for benefits during the week of April 19, 2009. She has filed for and received benefits since this date.

On June 10, the claimant was called for the 8:00 a.m. hearing. When the claimant did not answer, a message was left for the claimant to contact the Appeals Section immediately. The claimant did not contact the Appeals Section until 8:55 a.m. By the time the claimant called, the hearing had been closed and the employer's witness had been excused. The claimant requested that the hearing be reopened.

The claimant had been sleeping when she was called for the hearing. The claimant did not hear her cell ring because she had been sick the previous night and had not gotten much sleep. The claimant is also somewhat hard of hearing. When the claimant woke up just before 9:00 a.m., she contacted the Appeals Section.

#### **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).

Although the claimant intended to participate in the hearing, she did not take reasonable steps to make sure she was awake and available for the hearing. Oversleeping does not establish good cause to reopen the hearing. Therefore the claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The evidence indicates the claimant quit her employment when she failed to return to work or contact the employer after her vacation. Even if the claimant had been in the hospital, she should have contacted the employer the week she was to return to work if she planned to continue her employment. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6-2.

The evidence indicates the claimant abandoned her employment. While the claimant may have had compelling reasons for quitting, the facts do not establish that she quit for reasons that qualify her to receive benefits. As of April 19, 2009, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since April 19, 2009, the issue of overpayment is remanded to the Claims Section to determine.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's May 13, 2009 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of April 19, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver any overpayment is remanded to the Claims Section to determine.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/kjw