

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NAOUFEL E EL ALAOU**  
Claimant

**APPEAL NO. 09A-UI-03555-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 11/09/08**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Naoufel El Alaoui (claimant) appealed a representative's January 7, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 1, 2009. The claimant participated personally. The employer was represented by Tim Speir, Employer Representative, and participated by Jeff Kent, Warehouse Manager of Perishables, and Bill Baynes, Department Manager of Perishables. Exhibit D-1 was received into evidence. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 21, 2008, as a part-time order selector. The employer reprimanded the claimant for unsafe driving of his pallet jack. In June 2008, the employer issued the claimant a 15-day suspension for unsafe driving.

On June 30, 2008, the claimant returned to work and met with the employer. The employer told the claimant he would be spending time with a trainer with a focus on safety. The employer told the claimant he would be transferred from cheese to produce to meet the employer's increased demands in that area. The claimant told the employer he was going to college. The claimant did not think he was doing anything wrong and did not want to follow the employer's instructions. The employer told the claimant that if he did not like it, he could go home. The claimant told the employer he did not like it and left. Continued work was available had the claimant not resigned.

A disqualification decision was mailed to the claimant's address of record on January 7, 2009. The claimant did not receive the decision. The claimant received an overpayment decision and appealed it on March 4, 2009.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant voluntarily quit work without good cause attributable to the employer. The administrative law judge concludes he did.

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 24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. When an employee quits work after having been reprimanded, his leaving is without good cause attributable to the employer. The claimant left work after having been reprimanded. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

#### **DECISION:**

The representative's January 7, 2009 decision (reference 01) is affirmed. The claimant's appeal is timely. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs