

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHAD A. KOSIERACKI
Claimant

APPEAL 22A-UI-07248-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART ASSOCIATES
Employer

OC: 04/19/20
Claimant: Appellant (1)

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On March 17, 2022, the claimant/appellant filed an appeal from the March 2, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant voluntarily quitting on January 29, 2020. The parties were properly notified about the hearing. A telephone hearing was held on May 6, 2022. The hearing was held together with appeals 22A-UI-07249-CS-T and 22A-UI-07251-CS-T, and combined into one record. Claimant participated. Sara Klindt was present as claimant's witness. Employer participated through hearing representative, Ted Valencia. Jodi Curl and store lead, Christian Perfetti, were present as witness on behalf of the employer. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

- I. Is claimant's appeal timely?
- II. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on March 2, 2021. The appellant did not receive the decision. The first notice of disqualification was the overpayment decision dated March 10, 2022. The appeal was sent within ten days after receipt of those decisions.

Claimant began working for employer on February 20, 2018. Claimant last worked as a full-time Cap one associate. Claimant was separated from employment on January 27, 2020, when he voluntarily quit.

The employer received a complaint from a staff member regarding claimant making an inappropriate comment to her. Mr. Perfetti took the associate's statement and submitted it to the

employer's ethic's committee so they could make a determination on what steps he needed to follow. Mr. Perfetti began an investigation and received additional information from other staff members that reported claimant made inappropriate comments and sent inappropriate sexual photographs while he was at work to other staff members.

On January 29, 2020, Mr. Perfetti and Ms. Curl asked claimant to attend a meeting to discuss the complaint. While they were discussing the staff member's initial complaint the claimant became upset and said he was "sick of people turning him in " and said he was quitting. Claimant turned in the employer's property and left. Claimant did not return to work.

Prior to claimant's leaving the employer did not threaten to termination the claimant and claimant was not suspended. The employer had continuing work available to him if he had not voluntarily quit.

After claimant left the employer he obtained a job with Shoe Show Inc. and Pizza Ranch. Claimant filed for benefits with an effective date of April 19, 2020. Claimant began received benefits for the week ending April 25, 2020, and continued receiving them through week ending May 9, 2020.

The claimant filed for benefits as a result of these two jobs. If the claimant contends that he was filing for benefits due to the COVID-19 pandemic then he is directed to follow the instructions at the end of the decision to file an application for Pandemic Unemployment Assistance (PUA) benefits for the time period of April 19, 2020 through May 9, 2020.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant'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, subsections 10 and 11, 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 appellant 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 Emp't Sec. Comm'n*, 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 with good cause attributable to the employer. For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25 (6) and (21) provide:

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:

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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 was in a meeting and became upset. Claimant said he was quitting, turned in his badge, box cutter, discount card, and vest. Claimant then walked out and never returned to work. The employer had continuing work available to the claimant. As a result claimant voluntarily quit his employment. Claimant quit because he was sick of people turning him in. Staff members were reporting him for inappropriate work conduct. Claimant was upset at his co-workers and

was no longer happy working for the employer. Claimant's reason for voluntarily quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The appeal is timely.

The March 2, 2021, (reference 01) unemployment insurance decision is AFFIRMED. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

May 26, 2022

Decision Dated and Mailed

cs/ac

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

Individuals who do not qualify for regular unemployment insurance benefits, but who were unemployed between February 2, 2020, and June 12, 2021, unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is 107248.**

If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.