

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIC JOHNSON
Claimant

PRESTAGE FOODS OF IOWA LLC
Employer

APPEAL 21A-UI-08550-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Eric Johnson, the claimant/appellant, filed an appeal from the March 10, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 9, 2021. Mr. Johnson participated and testified. The employer participated through Carol McClurg, benefits and compensation supervisor.

ISSUE:

Is Mr. Johnson's appeal filed on time?
Did Mr. Johnson voluntarily quit without good cause attributable to the employer or was he discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Johnson at the correct address on March 10, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 20, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. March 20, 2021 was a Saturday; therefore, the deadline was extended to Monday, March 22, 2021. Mr. Johnson filed an appeal via phone on March 22, 2021. The appeal was received by Iowa Workforce Development on March 22, 2021.

The administrative law judge further finds: Mr. Johnson began working for the employer on March 25, 2019. He worked full-time counting and sorting pigs. His last day of work was October 30, 2019.

The employer's policy provides that each employee begins with zero points. Employees are docked 1 point for each absence, and one-half points for any day the employee works less than 51 percent of the day, whether they arrive late or leave early. Employees are required to call

the absence line and leave a message if they will be late to work or cannot attend work. Employees are counseled when they reach 7 points, 8 points and 9 points. Employees who accrue 10 points may have their employment terminated. Employees are considered to have voluntarily quit after three consecutive days of No-Call/No-Shows. Mr. Johnson acknowledged receiving the policy on, or about, his hire date.

On October 1, 2019, the employer had a counseling session with Mr. Johnson because he had 8 points. By the end of the meeting, the employer had removed 2 points from Mr. Johnson's record so he had 6 points. On October 18, 2019, the employer had another counseling session with Mr. Johnson because he had 9 points.

Mr. Johnson worked on October 30, 2019. He called in on October 31. Mr. Johnson also called his supervisor that day as he was driving to work. Mr. Johnson told the supervisor that he would be late due to car trouble. The supervisor told Mr. Johnson that if he was late he would be docked points and his employment would be over. Mr. Johnson's supervisor also told him that he would not be able to get into the employer's locked parking lot if he was late. Mr. Johnson knew he would be late and he understood the supervisor to be telling him that his job was over. So, Mr. Johnson did not attend work that day. Mr. Johnson was a No-Call/No-Show on November 1, 4 and 5. The employer considered Mr. Johnson to have quit as of November 5, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Johnson's appeal was filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The appeal deadline was March 22, 2021. Mr. Johnson filed his appeal on March 22, 2021. His appeal was filed on time.

The administrative law judge further concludes Mr. Johnson's separation from 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 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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 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).

In this case, Mr. Johnson mistakenly believed that his supervisor had fired him on October 31. Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). Based on the evidence, Mr. Johnson's supervisor did not terminate his employment but told him he *would be fired* if he was late, which was not an accurate statement of the employer's policy. Mr. Johnson was a No-Call/No-Show on November 1, 4 and 5 in violation of the employer's policy. This is not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The appeal was filed on time. The March 10, 2021, (reference 01) unemployment insurance decision is affirmed. Mr. Johnson 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.



Daniel Zeno
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June 24, 2021
Decision Dated and Mailed

dz/lj