

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GRACE B WENGERT
Claimant

BOOT BARN INC
Employer

APPEAL 21A-UI-16807-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (5)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 1, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits due to discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on October 6, 2021. The claimant participated personally. The employer participated through witness Jamie O'Brien. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-16808-DB-T and 21A-UI-16809-DB-T.

ISSUES:

Is the appeal timely?
Did the claimant voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance benefits decision was issued on July 1, 2020 (reference 01) and mailed to the claimant's address of record. Claimant never received the decision in the mail. Claimant filed an appeal on June 2, 2021 after receiving notifications that she was overpaid benefits.

Claimant worked for this employer part-time as a sales representative beginning on January 4, 2019. She was not guaranteed a certain number of hours per week upon hire.

On January 25, 2020, the claimant notified Amanda, a team lead, that she was quitting her position. Claimant had been scheduled to work that day, but was out of the state and unable to work. Claimant had received previous discipline for attendance on July 24, 2019, November 1, 2019, and November 6, 2019. Claimant was upset with the discipline she received in November of 2019 as she was scheduled to visit family in Texas for a wedding on October 30, 2019. Claimant was also frustrated with not being scheduled additional hours and being told to work various job tasks while at work by two different managers.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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

Date of submission and extension of time for payments and notices.

(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.

- a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

In this case, the claimant never received the denial decision in the mail. As such, the delay in the claimant filing the appeal was due delay by the United States postal services and the appeal shall be considered timely.

The next issue is whether the claimant voluntarily quit without good cause attributable to the employer. The administrative law judge finds that she did.

Iowa Code §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.

Claimant had an intention to quit and carried out that intention by tendering a verbal resignation on January 25, 2020. As such, 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).

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

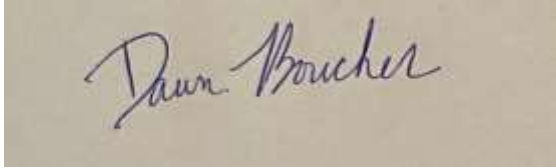
- (21) The claimant left because of dissatisfaction with the work environment.

The claimant voluntarily quit her employment because she was dissatisfied with her work environment. Her voluntary quitting was not attributable to the employer. As such,

unemployment insurance benefits are denied, as the separation from employment was disqualifying.

DECISION:

The appeal shall be considered timely. The July 1, 2020 (reference 01) decision is modified with no change in effect. Claimant voluntarily quit employment without good cause attributable to the employer on January 25, 2020. Unemployment insurance benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount after the January 25, 2020 separation date, and provided the claimant is otherwise eligible.

A rectangular box containing a handwritten signature in cursive script that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

October 08, 2021
Decision Dated and Mailed

db/ol