

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONTAVIUS E WISE

Claimant

APPEAL NO. 17A-UI-04286-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERTCH CABINET MFG INC

Employer

OC: 12/25/16

Claimant: Appellant (2)

Iowa Code § 96.6 (2) – Timeliness of Appeal
Iowa Code § 96.5 (1) Voluntary Leaving/Layoff

STATEMENT OF THE CASE:

Mr. Wise, the claimant, filed an appeal from a representative's decision dated January 13, 2017 reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily left employment on December 23, 2016 and found that the claimant failed to show good cause for voluntary leaving his employment. After due notice was provided, a telephone hearing was held May 11, 2017. Claimant participated. The employer participated by Ms. Mitzi Tann, Human Resource Director. Employer Exhibits A and B were admitted into the hearing record.

ISSUE:

Whether the appeal filed in this matter was timely and whether claimant voluntarily left employment.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: a disqualification letter was mailed to the claimant's last known address of record on January 13, 2017. The claimant received the decision within a few days by the US Postal Service. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 23, 2017. The appeal was not filed until April 19, 2017, which is after the date noticed on the disqualification decision.

Mr. Wise received the representative's decision but was confused and did not understand it because the decision stated that the claimant had voluntarily left employment. Mr. Wise had not indicated that he had quit his employment, but had attempted to explain when he most recently opened his claim for benefits, that he had been temporarily laid off from work due to a plant shut down on December 25 through December 31, 2016. Mr. Wise was unfamiliar with the process of filing a claim for unemployment insurance benefits, because the employer had previously assisted worker's lay off by taking care of many of the steps required to file a claim on behalf of the laid off employee's. Because of a change in agency procedures, the employer was no longer assisting employees in these matters and Mr. Wise was unfamiliar with the process or its

requirements. Mr. Wise followed a reasonable course of action by calling the telephone number provided at the bottom of the adjudicators decision but was referred to a claims center. Mr. Wise then received inaccurate information about his claim, the representative's decision and subsequent action needed to file an appeal. When more information was available to Mr. Wise by agency personnel, Mr. Wise successfully filed an appeal dated April 19, 2017. The appeal was filed with the assistance of agency personnel at that time.

Mr. Wise did not voluntarily leave his employment with Bertch Cabinet Mfg. Inc. on December 23, 2016, but was laid off for a one week period due to a plant shut down based upon business conditions. The claimant received no pay from the employer during this time and the company had encouraged employees to file for unemployment insurance benefits. After the layoff, due to lack of work, beginning December 25, 2016 ending December 31, 2016, Mr. Wise returned to his employment with the company and continues to be employed at the time of hearing. The employer supports Mr. Wise in his filing for unemployment insurance benefits for the one week period.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

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. . . . 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.

The administrative law judge concludes that the claimant disagreed with the adjudicators determination dated January 13, 2017, Ref 01 and was confused by the disqualification for benefits that had been imposed and the reasons given for it. The claimant was unfamiliar with the process of filing for benefits because he unfamiliar with the process and in the past the employer had been allowed to file claims on behalf of worker's being laid off. Mr. Wise testified that he did call the telephone number provided on the decision but that he was referred to a different source of information and the information provided by that source provided inaccurate information. Later, with the personal assistance of an agency representative who walked Mr. Wise through the appeal process and claimant was able to successfully file his appeal beyond the time limit.

The administrative law judge concludes that the claimant's appeal should be considered timely because the claimant's delay in filing his appeal was due in part to information that not only inaccurate but confusing to the claimant.

Based upon the evidence in the record, the administrative law judge concludes that Mr. Wise did not voluntarily leave his employment with Bertch Cabinet Mfg. Inc. on December 23, 2016, but that the claimant was temporarily laid off for the period of December 25, 2016 through December 31, 2016 for lack of work. Mr. Wise received no compensation from Bertch Cabinet Mfg. Inc. for the one week period that he was laid off due to lack of work.

The administrative law judge concludes that the claimant is eligible to receive unemployment insurance benefits for that one week period provided he is otherwise eligible by Iowa Law.

DECISION:

The representative's decision dated January 13, 2017, reference 01, is hereby reversed. The claimant's appeal is considered timely; the claimant did not voluntarily quit employment on December 23, 2016 but was laid off due to of lack of work under non disqualifying conditions. Claimant is eligible to receive benefits for that week provided that he is otherwise eligible with the requirements of Iowa Law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

scn/scn