

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BOYD CLARK
Claimant

O'REILLY AUTOMOTIVE INC
Employer

APPEAL 20A-UI-12892-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/20
Claimant: Appellant (1)

Iowa Code Sec. 96.6(2) - Timeliness of Appeal
Iowa Code Sec. 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On October 13, 2020, the claimant filed an appeal from the September 30, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2020. Claimant participated. Employer participated through store leader district manager, Larry Roof and through store manager, Amy Brooks. No exhibits were offered. Notice was taken of the administrative record which contained claimant's written appeal and a copy of the postmarked envelope.

ISSUES:

Is the appeal timely?
Did claimant voluntarily quit with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 15, 2020, Iowa Workforce Development mailed a reference 01 unemployment insurance decision to claimant's address of record. The decision denied benefits and warned that an appeal was due by October 10, 2020. Claimant mailed an appeal which was postmarked October 13, 2020.

Claimant was employed as a part time parts specialist beginning August 28, 2017 until June 21, 2020 when he voluntarily quit. Claimant's immediate supervisor was Amy Brooks. Claimant regularly worked eight hour shifts on Sundays. During these shifts claimant worked in the store with one other person. No manager was in the store on Sundays. Claimant quit because he was stressed out and had high blood pressure. Claimant notified his employer that he was quitting one hour before his shift was scheduled to begin. Claimant received discipline on June 19, 2020 for not returning to work after a break.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is timely and his separation from employment is a voluntary quit without good cause attributable to the employer.

Iowa Code section 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 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).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from unemployment insurance 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The appeal due date listed on the Iowa Workforce Development Decision was October 10, 2020, which was a Saturday. The following Monday, October 12, 2020 was a holiday, making the appeal deadline October 13, 2020. Claimant's appeal was filed on October 13, 2020. The administrative law judge concludes that the appeal was timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

The next issue to be decided is whether claimant voluntarily quit with good cause attributable to the employer. Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 871-24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

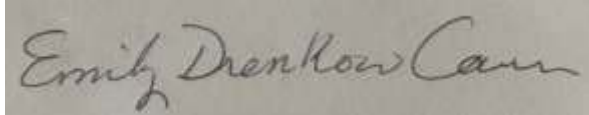
In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In this case, claimant testified that he had stress and high blood pressure. A doctor did not direct the claimant to quit his job. Claimant was never informed by a medical professional that his medical issue was exacerbated by the working conditions. Therefore, claimant did not resign for a good cause reason attributable to employer.

To the extent claimant contends he resigned due to having to work eight hour shifts on Sundays with only one other person who was not a manager, the employer testified that is the normal Sunday working conditions at all of its stores in accordance with its own policy. Claimant's dissatisfaction with the job itself is not a good cause reason for resignation. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION:

The September 30, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant is separated from the employment without good cause attributable to employer. Benefits are withheld until such time as he works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 18, 2020
Decision Dated and Mailed

ed/scn

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 due to disqualifying separations, but who are currently 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.