

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RASHID ALI
Claimant

PREMIER EMPLOYEE SOLUTIONS LLC
Employer

APPEAL 20A-UI-08110-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/26/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On July 9, 2020, Rashid Ali (claimant/appellant) filed an appeal from the June 2, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit without good cause on December 28, 2019.

A telephone hearing was held on August 21, 2020, at 8:30 a.m. The parties were properly notified of the hearing. Claimant participated personally with the assistance of an Arabic-language interpreter. Employer participated by Branch Manager Tiffany Kniffen. The conference call was unexpectedly interrupted during the hearing and the administrative law judge was unable to contact both parties after the interruption to continue with the hearing. The parties were subsequently contacted and a hearing was set for September 4, 2020 at 8 a.m. Claimant again participated with the assistance of an Arabic-language interpreter. Kniffen participated as well. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- III. Did the claimant make a timely request for another job assignment?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to claimant at the above address on June 2, 2020. Claimant received the decision around that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by

June 12, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision online on July 9, 2020.

Claimant's native language is Arabic. He can read and speak some basic English but had difficulty in reading and understanding the decision. He called the number on the decision as directed for further information. However, he was unable to reach a department representative. He was eventually able to determine what the decision meant and how to proceed by speaking with friends and with employer. Claimant filed his appeal online with the assistance of a friend shortly thereafter.

Claimant worked for employer as a temporary employee. His most recent assignment began May 1, 2019. The assignment ended on December 31, 2019, due to several no-call, no-show absences. Employer was unable to reach claimant after that time, and claimant did not contact employer to request further assignment. Claimant signed for and received a copy of employer's policy requiring employees to contact it to request further assignment within a week of an assignment ending. The policy provides that failure to do so is considered a voluntary quit.

Claimant stopped appearing to the assignment because he believed he should have been brought on as a permanent employee and because he chose to move to Alaska. Claimant did move to Alaska on January 1, 2020, and has remained there since. He has worked for Trident Seafood since that time, whenever work was available. He estimates he has earned approximately \$6,000.00 in wages since separating from employer. Claimant's weekly benefit amount is \$237.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the June 2, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit without good cause on December 28, 2019 is REVERSED. The administrative law judge finds the appeal is timely. Claimant voluntarily quit without good cause but has since earned insured wages equal to ten times his weekly benefit amount. Claimant is therefore not disqualified and is eligible for benefits, provided he meets all other eligibility requirements. However, employer's account shall not be charged.

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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 administrative law judge finds there was good cause for the delay in filing the appeal and the appeal is therefore timely. Claimant made diligent efforts to understand the decision and file an appeal but was hindered in doing so because English is not his native language and because he had difficulty reaching the department to get clarity. Because the administrative law judge finds the appeal is timely, the underlying issues will be addressed.

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

(2) The claimant moved to a different locality.

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

Iowa Admin. Code r. 871-23.43 provides in relevant part”

a. To meet the ten times the weekly benefit amount rule in insured work requalification provision, the following criteria must be met:

Subsequent to leaving or refusing work, the individual shall have worked in (except in back pay awards) and been paid wages equal to ten times the claimant’s weekly benefit amount.

b. An employer’s account shall not be charged with benefit payments to an eligible claimant who quit such employment without good cause attributable to the employer or who was discharged for misconduct or who failed without good cause either to apply for available, suitable work or to accept suitable work with the employer but shall be charged to the balancing account.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant’s departure from employment was voluntary. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). “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”. *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

“Good cause” for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant’s departure from employment was voluntary. However, claimant has not carried his burden of proving the voluntary leaving was for good cause

attributable to employer. Claimant voluntarily quit by abandoning the job. Claimant stopped appearing to the assignment because he believed he should have been brought on as a permanent employee and because he chose to move to Alaska. Claimant did move to Alaska on January 1, 2020, and has remained there since. Moving to another location and being dissatisfied with the work environment are not good cause reasons for quitting attributable to employer. The separation from employment is therefore disqualifying. However, because claimant has earned wages for insured work in excess of ten times his weekly benefit amount since the separation, no disqualification is imposed and claimant is eligible for benefits, provided he meets all other eligibility requirements. Furthermore, employer's account shall not be charged.

DECISION:

The June 2, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit without good cause on December 28, 2019 is REVERSED. The administrative law judge finds the appeal is timely. Claimant voluntarily quit without good cause but has since earned insured wages equal to ten times his weekly benefit amount. Claimant is therefore not disqualified and is eligible for benefits, provided he meets all other eligibility requirements. However, employer's account shall not be charged.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 8, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.