

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN D STOCKHAM
Claimant

APPEAL NO. 12A-UI-03997-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AVENTURE STAFFING & PROFESSIONAL
SERVICES LLC**
Employer

OC: 12/05/10
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 11, 2011, reference 02, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on May 16, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Kayla Neuhaufen participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence.

ISSUE:

Did the claimant file a timely appeal?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full time for the employer on an assignment at Soo Tractor as an assembler from October 11 to October 26, 2010.

On October 26, 2010, the claimant contacted a staffing representative with the employer, Christie Shinall, and informed her that he was going to have to quit the job at Soo Tractor because his feet were swollen and he could not walk. When he asked about a different job, Shinall told him that he would need to contact the employer after getting a release from his doctor stating he could return to work. The claimant never contacted the employer again. As a result, the claimant voluntarily left his employment with the employer.

The claimant never received the decision dated February 11, 2011, reference 02, that concluded he voluntarily quit employment without good cause attributable to the employer. He was not aware of the disqualification decision until he received an overpayment decision mailed to him on April 3, 2012. He filed an appeal of that decision on April 12, 2012.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal of the disqualification decision was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The claimant did not have a reasonable opportunity to file a timely appeal because he did not receive the decision back in January 2011. The appeal is deemed timely.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1 and 96.5-2-a.

The unemployment insurance law provides that individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I find that Christine Shinall's activity report made at the time of the events is more credible than the claimant's recollection of the events. That report shows that the claimant was to contact Shinall after he had obtained a doctor's release. Instead, the claimant did not have any further contact with the employer. There is no evidence that the claimant was advised to leave employment by a doctor.

The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

DECISION:

The unemployment insurance decision dated February 11, 2011, reference 02, affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css