

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY LEWIS
Claimant

APPEAL NO: 16A-UI-07452-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABSOLUTE FLAVORS LLC
Employer

OC: 05/29/16
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 15, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 26, 2016. The claimant participated in the hearing. Sherry Warth, Owner, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether the claimant voluntarily left his employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on June 15, 2016. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 25, 2016. That date fell on a Saturday so the appeal was actually due June 27, 2016. The appeal was not filed until July 6, 2016, which is after the date noticed on the disqualification decision. The claimant went to Workforce June 17, 2016, to file his appeal but the fax machine in that office was not working properly and staff told the claimant if he did not receive a letter from the Appeals Section he should call Workforce or go back to the office after 10 days (Department's Exhibit D-1). The claimant did not receive any correspondence from the Appeals Section and consequently returned to the local office June 28, 2016, to file his appeal again (Department's Exhibit D-1). The claimant did not go back sooner to file his appeal because he did not have transportation. While transportation issues are not a good cause reason for filing a late appeal, and it is unlikely the local office representative would tell the claimant to return in 10 days if he did not receive a letter from the Appeals Section because there is a 10-day period in which to file an appeal and the claimant had already missed two of those days, the claimant did attempt to file his appeal June 17, 2016, but the fax machine at the local office failed. Under these circumstances, the administrative law judge concludes the claimant has filed a timely appeal.

The claimant was employed as a part-time line prep cook for Smokey D's BBQ from September 14, 2015 to May 31, 2016. On May 23, 2016, he texted his manager and stated he would not be in but would bring a doctor's excuse May 24, 2016. On May 24, 2016, the claimant was a no-call no-show. On May 25, 2016, he texted his manager at 10:59 a.m., when his shift started at 9:00 a.m., and stated he was not coming in that day because he was "all fkd up" but did state he had a doctor's note. On May 26, 27 and 30, 2016, he was a no-call no-show. On May 31, 2016, he texted his manager asking where he should park and his manager replied she had not heard from him for several days and consequently his job was no longer available to him.

The claimant did see his health care provider May 24, 2016, and received a note stating he could return to work on that date (Claimant's Exhibit A). He returned to the doctor's office May 26, 2016, and received another note stating he was seen in the office and "may return to work May 27, 2016" (Claimant's Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

While the claimant may have injured his back and sought medical treatment, it does not relieve him of the responsibility of reporting his absences to the employer each day he is going to be gone. The claimant did report his absence May 23, 2016, and indicated he would bring a doctor's note the following day. He did see his physician May 24, 2016, and was released to return to work that day but did not report for work after that appointment or call the employer to report his absence. He did contact his manager May 25, 2016, to state he would not be in because he was "all fkd up" which could mean a number of things. Additionally, that call was

nearly two hours after the start time of his shift. He returned to his doctor's office May 26, 2016, and was released to return to work without restrictions May 27, 2016, but did not notify the employer of his absences on either of those dates or May 30, 2016, when he was also a no-call no-show. The employer reasonably determined the claimant voluntarily quit his job.

The claimant's doctor's excuses at most covered May 24, 26 and 27, 2016. However, he failed to properly report the May 26 and 27, 2016, absences to the employer. Absences due to illness or injury are generally considered excused under the law but must be properly reported in order to be excused. The claimant failed to properly report his absences and consequently was a no-call no-show May 26, 27 and 30, 2016. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, he is considered to have voluntarily left his employment without good cause attributable to the employer. Therefore, benefits are denied.

DECISION:

The June 15, 2016, reference 01, decision is affirmed. The claimant's appeal is timely. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs