

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON M BRIDGES
Claimant

VAN DIEST SUPPLY CO
Employer

APPEAL 17A-UI-03650-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/26/17
Claimant: Appellant (1)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 14, 2017 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2017. The claimant, Brandon M. Bridges, participated personally and through witness Tasha Bridges. The employer, Van Diest Supply Co., was represented by Attorney Espnola Cartmill and participated through witnesses Carolyn Cross, Lee Trask, Christian Austin, Bret Henderson and Kevin Spencer. Employer's Exhibits 1 through 4 were admitted.

ISSUES:

Did the claimant file a timely appeal?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

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

A decision of the Iowa Workforce Development representative was issued on March 14, 2017 that stated claimant was not eligible for unemployment insurance benefits because he voluntarily quit working without good cause attributable to the employer. The decision stated that it becomes final unless an appeal is postmarked by March 24, 2017, or received by Iowa Workforce Development Appeal Section by that date. Claimant mailed his appeal on March 21, 2017; however, that appeal was not received by the Appeals Bureau. Claimant later filed another appeal via the on line system on April 3, 2017 when he discovered that his original appeal was never delivered by the United States Postal Service.

Claimant was employed full time as a general laborer. Claimant was employed from December 15, 2016 until February 22, 2017 when he voluntarily quit. Mr. Austin was claimant's immediate

supervisor. This employer operates a manufacturing plant. Claimant tendered his verbal resignation when he called into work on February 22, 2017.

During the course of his employment claimant was ill. Claimant suffers from asthma and testified that he believed the chemicals in the plant caused his asthma to flare and make him ill. There were several job tasks at this employer that required employees to wear respirators, however, claimant was never issued a respirator because he was never assigned to a job task that required use of a respirator. Claimant never visited with any physician about his illness prior to voluntarily quitting his position. Claimant never told any supervisor or other person in management that he would voluntarily quit if he were not issued a respirator. Claimant never told any supervisor or other person in management that he believed chemicals in the plant aggravated his asthma.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue involves whether the claimant filed a timely appeal. The administrative law judge finds that he did.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

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 Iowa Supreme Court has declared that

there is a mandatory duty to file appeals from representatives' 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 claimant credibly testified that he mailed his appeal to the department prior to the appeal deadline on March 24, 2017. Therefore, the claimant's appeal shall be accepted as timely.

The second issue involves the claimant's separation from employment. Claimant voluntarily quit by tendering his verbal resignation on February 22, 2017. As such, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

A notice of intent to quit for reasons other than work-related health problems is not required. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems.

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

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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.

Iowa Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

Claimant has the burden of proof to establish that the injury, illness or allergy condition is work-related. *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976). In this case, claimant has not met this burden.

Further, claimant did not present any competent evidence showing adequate health reasons to justify his quitting and was never advised by a physician to quit his job. Additionally, claimant never notified his supervisor or any other person in management that he intended to quit if a respirator was not issued to him. As such, no notice of intent that he was going to quit was provided to the employer and the separation was without good cause attributable to the employer.

While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The March 14, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit his employment without good cause attributable to employer. Unemployment benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs