

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN L THOREN
Claimant

AVENTURE STAFFING & PROFESSIONAL
Employer

APPEAL 24A-UI-00113-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/26/23
Claimant: Respondent (4R)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Aventure Staffing & Professional, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) December 21, 2023 (reference 01) unemployment insurance (UI) decision. IWD found Mr. Thoren eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed him from work on November 5, 2023 for a reason that did not disqualify him from receiving UI benefits. On January 8, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Thoren for a telephone hearing scheduled for January 22, 2024.

The undersigned administrative law judge held a telephone hearing on January 22, 2024. The employer participated in the hearing through Toni Holguin, human resources specialist. Mr. Thoren participated in the hearing personally. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the employer discharge Mr. Thoren from employment for disqualifying job-related misconduct?

Did IWD overpay Mr. Thoren UI benefits?

If so, should he repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Thoren began working for the employer on May 9, 2016. He worked as a full-time general laborer assigned to work at Liguria Foods, LLC. His employment ended the same day because he found a new job with benefits. Mr. Thoren left to work for R & T Electric as a full-time handyman.

Mr. Thoren also worked for employer All In A Day LLC. He began working for this employer in October 2023 on assignment to Corteva. He worked as a full-time forklift operator. This

¹ Appellant is the person or employer who appealed.

assignment ended on November 2, 2023. Mr. Thoren applied for UI benefits after this assignment ended. IWD has not issued a decision about Mr. Thoren's eligibility for UI benefits based on the ending of his employment with All In A Day, LLC.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not end Mr. Thoren's job. Mr. Thoren did, and his separation from employment on May 9, 2016 was with good cause attributable to the employer.

Iowa Code section 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer.² A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.³ "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.⁴

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

In this case, Mr. Thoren voluntarily quit employment with this employer for the sole purpose of accepting better employment with employer R & T Electric. Mr. Thoren's quit does not disqualify him from REGULAR (state) UI benefits because he quit for the sole purpose of accepting an offer of better employment. Mr. Thoren is eligible for UI benefits, as long as no other decision denies him UI benefits. This employer's account should not be charged.

² Iowa Code § 96.6(2).

³ *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

⁴ *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

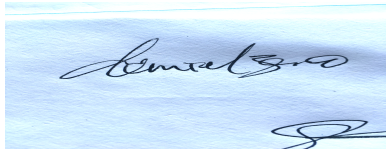
DECISION:

The December 21, 2023 (reference 01) UI decision is MODIFIED IN FAVOR OF THE APPELLANT, THE EMPLOYER. Mr. Thoren's separation from employment with this employer on May 9, 2016 does not disqualify him from REGULAR (state) UI benefits because he voluntarily quit for the sole purpose of accepting better employment. Mr. Thoren is eligible for UI benefits, as long as no other decision denies him UI benefits.

IWD must not charge this employer's account for any UI benefits IWD may pay Mr. Thoren.

REMAND:

The issue of Mr. Thoren's eligibility for REGULAR (state) UI benefits based on how his job ended with All In A Day, LLC is REMANDED (sent back) to the IWD Benefits Bureau for investigation and a decision.

A handwritten signature in blue ink, appearing to read "Daniel Zeno", is written over a light blue background. The signature is cursive and includes a large, stylized flourish at the end.

Daniel Zeno
Administrative Law Judge

January 24, 2024
Decision Dated and Mailed

DZ/jkb

APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.