

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHARLES D TRAVER
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PAULLINA IA 51046-0062**

**DARLING INTERNATIONAL INC
% TALX UCM
PO BOX 283
SAINT LOUIS MO 63166**

**APPEAL 20A-UI-05096-DB-T

ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515)281-7191**

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:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES D TRAVER
Claimant

APPEAL 20A-UI-05096-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DARLING INTERNATIONAL INC
Employer

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136 § 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 14, 2020 (reference 02) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on June 29, 2020. The claimant, Charles D. Traver, participated personally. Austin Traver participated as a witness on behalf of the claimant. The employer, Darling International Inc., did not participate. The employer registered a witness, Esmerelda Wilson, to participate in the hearing but she did not answer when the administrative law judge telephoned her. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's administrative records.

ISSUES:

Did the claimant file a timely appeal?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Is the claimant overpaid benefits?
Is the claimant overpaid Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision that disqualified the claimant from receipt of unemployment insurance benefits was mailed to the claimant's correct address of record on May 14, 2020. The claimant received the decision in the mail. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 24, 2020. The claimant mailed an appeal to the Appeals Bureau on May 22, 2020. Claimant telephoned Iowa Workforce Development about his appeal and was told that it was never received. Claimant filed another appeal online on June 1, 2020.

Claimant was employed full-time as a plant worker. He began working for this employer in August of 2018 and his employment ended on March 25, 2020 when he voluntarily quit. His immediate supervisor was Jason Smith. Mike Schutts was the plant manager.

On March 24, 2020, claimant was assisting his supervisor in hoisting and moving cattle into the plant. His supervisor hoisted a cow and was attempting to place it on the rail system to go into the plant. The hoist was not functioning properly and the cow fell and hit the claimant in the back of the head. Claimant's head was injured and he was unconscious for an undetermined period of time. Claimant's son, Austin Traver, was working at the plant with him. After hearing the accident, Austin came to the claimant's assistance, as did Mr. Smith. Mr. Traver told the claimant that he needed to report the accident to Mr. Schutts. Mr. Smith said they did not need to report the accident. Claimant eventually went to report the accident to Mr. Schutts with Mr. Traver and Mr. Smith. Mr. Schutts told the claimant that he did not need to seek medical attention at a hospital or clinic because he did not want the safety manager to have to get involved. Mr. Schutts also asked why Mr. Smith was using that hoist as it had been determined that it was not be used and should have been locked and tagged out. Mr. Smith reported he was using the broken hoist because it was quicker than hauling the animals with a different hoist.

Mr. Smith cleaned the claimant's wound and told him that he did not need further medical attention. Mr. Traver then told the claimant after work that he needed to have a doctor look at his wound and showed him what it looked like, because the claimant was unable to see it during work as it was located on his head. Claimant determined he needed to go to the emergency room and Mr. Traver drove the claimant to the emergency room.

While at the emergency room, the claimant texted his supervisor, Mr. Smith, that he was seeking medical attention. Mr. Smith told the claimant through text message not to disclose to the medical providers that he was injured at work. Claimant decided to be honest and tell the medical providers that he was injured at work.

Claimant went to work the next day and gave the medical paperwork to Mr. Schutts. Mr. Schutts had the claimant complete paperwork about the accident, which he did. Later on during the claimant's shift, Mr. Schutts instructed the claimant that he needed to come with him to have a physical completed. Claimant became upset that Mr. Schutts was instructing him to have a physical completed when he had stated the day prior that the claimant did not need medical attention. Claimant was also upset that his supervisor had instructed him not to disclose to his doctor that he was injured while at work and that his supervisor used an unsafe hoist, which caused his injury. The claimant told his supervisor that he was quitting and left that day. He then called Mr. Schutts the following morning and explained to him that he was quitting because of the incident that occurred, his supervisors' handling of the incident, and the way he was treated.

Claimant's administrative records establish that he received regular unemployment insurance benefits of \$3,500.00 from March 15, 2020 through May 9, 2020. Claimant also received Federal Pandemic Unemployment Compensation benefits of \$3,600.00 from March 29, 2020 through May 9, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue is whether the claimant filed a timely appeal. The administrative law judge concludes the appeal shall be deemed timely.

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.

(emphasis added).

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 record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed on June 1, 2020. 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).

However, in this case, the claimant's delay in submission was due to delay or other action of the United States postal service because his original appeal was not properly routed to Iowa Workforce Development.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

As such, claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The appeal shall be considered timely.

The next issue is whether the claimant voluntarily quit with good cause attributable to the employer. The administrative law judge finds that he did. Benefits are allowed, provided the claimant is otherwise eligible.

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.

Claimant had an intention to quit and carried out that intention by tendering a verbal resignation. 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).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec.*

Commission, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

Claimant contends that he voluntarily quit due to intolerable working conditions, or unsafe working conditions, because he was injured on the job when his supervisor was using an unsafe hoist and that he was instructed not to seek medical attention or disclose the cause of his injury as being work-related to his medical providers. As such, if claimant establishes that he left due to intolerable or detrimental or unsafe working conditions, benefits would be allowed.

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.26(2) 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:

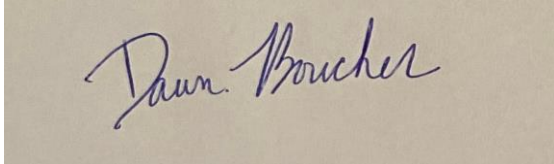
(2) The claimant left due to unsafe working conditions.

The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). In this case, a reasonable person would have believed that claimant's working conditions were unsafe, intolerable and detrimental to the claimant because the claimant's supervisor was operating an unsafe hoist, knowing that it was not to be used. Further, claimant's supervisor failed to get the claimant proper medical care and instructed the claimant to be dishonest with his medical providers about the cause of the injuries he sustained. This rises to the level of intolerable, detrimental, and unsafe working conditions. As such, the claimant's voluntary quitting was for a good-cause reason attributable to the employer according to Iowa law. Benefits are allowed,

provided the claimant is otherwise eligible. Because benefits are allowed, the issues of overpayment of benefits and overpayment of Federal Pandemic Unemployment Compensation are moot.

DECISION:

The appeal shall be considered timely. The May 14, 2020 (reference 02) unemployment insurance decision is reversed. Claimant voluntarily quit employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

July 10, 2020
Decision Dated and Mailed

db/mh