

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONALD W MCINTYRE
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 20A-UI-10107-BH-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause Attributable to the Employer
Iowa Administrative Code rule 871-24.26 – Voluntary Quit With Good Cause Attributable to the Employer
Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Donald W. McIntyre, appealed the June 19, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a finding he voluntarily quit his job with Team Staffing Solutions, Inc. (TSS) without good cause attributable to the employer. The agency properly notified the parties of the appeal and hearing.

The undersigned presided over a telephone hearing on October 14, 2020. McIntyre participated personally and testified. His wife, Kelly, also testified. TSS participated through Sarah Fiedler, who testified.

ISSUES:

Was McIntyre's separation from employment with TSS a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

TSS hired McIntyre on January 21, 2019. He worked there full time as a laborer. McIntyre voluntarily quit due to health issues on February 24, 2020.

TSS assigned McIntyre to work at a client business. McIntyre's health issues prevented him from performing the work up to the client business's standards. McIntyre submitted notice of his resignation on February 24, 2020. In May, TSS contacted McIntyre to see if he would be willing to accept an assignment, but he was not.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) requires appeals to be filed within ten days for them to be timely. Iowa Administrative Code rules 871-24.35(2) states:

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 division 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.

The agency representative decision at issue in this appeal is dated June 19, 2020. McIntyre appealed on August 26, 2020. McIntyre's appeal was not filed within ten days, as required by statute.

There is no indication McIntyre's late appeal was caused by agency or U.S. Postal Service error. His appeal is therefore untimely. But even assuming for the sake of argument that McIntyre's appeal was timely filed, he is not eligible for benefits. For the reasons that follow, the undersigned concludes McIntyre left employment with TSS without good cause attributable to the employer.

Iowa Code section 96.5(1) disqualifies a claimant from benefits if the claimant quit his job without good cause attributable to the employer. The Iowa Supreme Court has held that good cause requires "real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). Moreover, the court has advised that "common sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

According to the Iowa Supreme Court, good cause attributable to the employer does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *E.g. Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787, 788 (Iowa 1956).

A burden-shifting framework is used to evaluate quit cases. Because an employer may not know why a claimant quit, the claimant has the initial burden to produce evidence suggesting the claimant is not disqualified from benefits under Iowa Code section 96.5(1) *a* through *j* and section 96.10. If the claimant produces such evidence, the employer has the burden to prove the claimant is disqualified from benefits under section 96.5(1).

Iowa Administrative Code rule 871-24.25 creates a presumption a claimant quit without good cause attributable to the employer in certain circumstances. Iowa Administrative Code rule 871-24.26 identifies reasons for quitting that are considered for good cause attributable to the employer. Under rule 871-24.25(35), it is presumed the claimant quit without good cause attributable to the employer if:

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.

Here, the evidence establishes McIntyre quit due to a personal health issue. There is no indication the health issue is related to his work for TSS. He did not report back to TSS and offer his services. In fact, TSS called McIntyre to offer work, but he declined.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 19, 2020 (reference 01) unemployment insurance decision is affirmed. McIntyre voluntarily left employment without good cause attributable to TSS. Benefits are withheld until such time as McIntyre has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though McIntyre is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he is eligible for such compensation for the week claimed.

This decision does not address whether McIntyre is eligible for PUA. For a decision on such eligibility, McIntyre must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.



Ben Humphrey
Administrative Law Judge

October 19, 2020
Decision Dated and Mailed

bh/sam

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>