

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANDREW N NEITZ**  
Claimant

**ROSE ACRE FARMS**  
Employer

**APPEAL 19A-UI-04921-S1**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/05/19  
Claimant: Appellant (1)**

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Iowa Code § 96.5-1 - Voluntary Quit  
Section 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Andrew Neitz (claimant) appealed a representative's June 7, 2019, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Rose Acre Farms (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for September 3, 2019, in Carroll, Iowa. The claimant participated personally. His mother, Lisa Neitz, and friend, Dean Beukema, participated on the claimant's behalf. The employer participated by Tami Ryerson, Human Resources Manager. The administrative law judge took official notice of the administrative record. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 21, 2014, and at the end of his employment he was working as a full-time laborer. He signed for receipt of the employer's handbook when he was hired. The claimant was diagnosed with autism, epilepsy, and asthma. He could perform his job and tell the truth but had memory issues.

On April 26, 2019, at 4:37 p.m. the employer received a text from the claimant that said, "Consider this my 2 week notice". The employer accepted the resignation and planned the claimant's last day to be May 10, 2019. On or about May 1, 2019, the employer received another text indicating the claimant would not return to work the following week because the employer had already approved his resignation. He wished to take time off for the week. The claimant's last day of work was April 30, 2019. Continued work was available had the claimant not tendered his resignation.

A disqualification decision was mailed to the claimant's last known address of record on June 7, 2019. He did not receive the decision within ten days. The claimant received the decision on June 19, 2019. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 17, 2019. The appeal was filed on June 19, 2019.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant appealed the decision as soon as he received it. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He sent repeated texts to the employer stating he was leaving. The employer accepted the resignation. When an employee gives notice of an intention to quit and the employer accepts the employee's resignation, his leaving is without good cause attributable to the employer. The claimant did not provide the employer with any evidence at the time of his separation, showing the texts were inaccurate. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

**DECISION:**

The representative's June 7, 2019, decision (reference 02) is affirmed. The appeal in this case was timely. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs