

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TRENTON FORREST
Claimant

APPEAL NO. 14A-UI-03473-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WASHINGTON COUNTY JAIL
Employer

OC: 01/05/14
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment
Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Washington County Jail (employer) appealed an unemployment insurance decision dated January 28, 2014, (reference 01), which held that Trenton Forrest (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Jail Administrator Gina Greiner, Sheriff Jerry Dunbar, Chief Deputy Jared Schneider, and Human Resources Auditor Julie Reid. Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the employer filed a timely appeal or established a legal excuse for filing a late appeal, and if so, whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A decision allowing benefits was mailed to the employer's last-known address of record on January 5, 2014. The employer never received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 7, 2014.

The employer learned from co-employees that the claimant was receiving benefits and Jail Administrator Gina Greiner testified she called Iowa Workforce on February 6, 2014, to confirm that information. The employer witnesses testified two appeal letters were faxed in on February 21, 2014. No fax transmission reports were provided. In Ms. Greiner's appeal letter, she indicates she spoke to Iowa Workforce on February 18, 2014, and "was advised that he is receiving unemployment benefits." When questioned about the discrepancy, Ms. Greiner testified that she spoke to Iowa Workforce on several occasions. The employer never received

any information regarding its appeal and Ms. Greiner again contacted Iowa Workforce on April 1, 2014. She learned the original appeals were never received by Iowa Workforce so she faxed in the appeal letters again on April 1, 2014.

The claimant was hired as a part-time jailer on December 6, 2007, he became full time on January 22, 2008, and was also promoted to a shift supervisor position. He voluntarily quit his employment on January 7, 2014, after he became angry and walked out. The claimant previously applied for the jail administrator position but Gina Greiner was chosen and he was upset about that. He was participating in a shift supervisor meeting with another shift supervisor, Sheriff Jerry Dunbar, Chief Deputy Jared Schneider and Ms. Greiner. After she left the room, the claimant complained about her and made derogatory comments. Sheriff Dunbar told him it was not the time or the place to make those types of comments. Ms. Greiner returned and shortly thereafter, the claimant said he was done. Sheriff Dunbar asked him what he meant and the claimant said he was done working there. He stood up and Sheriff Dunbar told him to sit down so they could talk about it but he refused. Sheriff Dunbar told him he could sign the papers on his way out and the claimant left.

The claimant filed a claim for unemployment insurance benefits effective January 5, 2014, and has received benefits after the separation from employment in the amount of \$1,224.00. The employer never received any information regarding the fact-finding interview. It was reported that the fact finder called the employer and no one answered but the employer said its office is open 24 hours a day.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2).

The employer did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. Without timely 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 employer filed the appeal on February 21, 2014, but it was not received by Iowa Workforce. Immediately upon receipt of information to that effect, a second appeal was filed. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by walking off the job on January 7, 2014. He was effectively warned that if he left and walked out the door, he was no longer employed but he left anyway.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant was overpaid benefits in the amount of \$1,224.00. The matter of deciding whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The employer appeal in this case was timely. The unemployment insurance decision dated January 28, 2014, (reference 01), is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css