

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PHILIP S HARTWEG
Claimant

MEDIACOM COMMUNICATIONS
Employer

APPEAL 21A-UI-12286-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/24/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On May 10, 2021, the claimant/appellant filed an appeal from the February 26, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant voluntarily quitting. The parties were properly notified about the hearing. A telephone hearing was held on July 22, 2021. Claimant participated at the hearing. Employer participated through Senior Manager of Human Resources, Lisa Wiblin. Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 were admitted into the record.

ISSUES:

Was the appeal timely?

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on February 26, 2021. The appellant did receive the decision. Claimant testified that he called the toll free number on the decision to let them know he wanted to appeal the decision. The representative told him she could take care of the appeal for him. Time went by and he never heard back about his appeal so he filed an appeal on May 10, 2021 through the online portal.

Claimant began working for employer on July 21, 2014. Claimant last worked as a full-time broad band Specialist III. Claimant was separated from employment on January 8, 2021.

Claimant last worked for the employer on October 13, 2020, after that time period he began experiencing personal issues with his wife. This impacted claimant so he could not work and sought professional help to help him cope with his mental health. After a period of time he was done receiving his medical care but he did not return back to work. Claimant had been instructed to fill out FMLA documents so he could take leave. Claimant thought his wife had completed them

but she did not fill them out. Employer called claimant on November 30, 2020, to inquire about the paperwork and see if claimant intended on returning to work. Claimant had informed the employer that he and his child had COVID for a period of time in November but he was ready to return to work on December 1, 2020. Employer informed claimant that he needed to submit a negative covid test and then he could return to work. Employer also notified claimant that if he could provide proof he had tested positive for COVID the employer would pay him for the period of time he was ill and on the mandatory quarantine. Claimant did not provide the test results to the employer so he could return to work.

Throughout the month of December claimant continued to have personal issues that prohibited him from coming to work. Claimant did not turn in the FMLA paperwork and was not on a protected leave. Employer sent claimant a letter on December 11, 2020, asking the claimant to call the employer by December 16, 2020, so they could discuss his employment. (Exhibit 6). The claimant emailed the employer on December 21, 2020, asking if he was too late. (Exhibit 7). The employer sent a follow up letter on January 6, 2021, informing claimant he was being terminated for not responding to the employer's December 11, 2020 letter. (Exhibit 8). The employer terminated claimant for job abandonment.

The employer has a no call, no show policy that if a claimant does not call into work or show up for work for three consecutive days then it is considered job abandonment. (Exhibit 12, pg. 2). Claimant had a previous warning for his absenteeism on July 14, 2020. (Exhibit 10). The warning informed claimant that if he did not follow the company's policy and communicate when he was unable to work that he could be terminated. (Exhibit 10).

REASONING AND CONCLUSIONS OF LAW:

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

The claimant's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD customer service advisor. The customer service advisor mistakenly told the claimant she could appeal the decision for him. The customer service advisor was incorrect and an appeal was not filed because customer service advisors cannot accept appeals. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant voluntarily quit with good cause attributable to the employer. For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without 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.

Iowa Admin. Code r. 871-24.25(20) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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).

The claimant asked the employer to be put on a leave so he could deal with his personal problems and mental health. Claimant did not return to work and was not on a company approved protected leave. The claimant did not attempt to return to work from October 14, 2020 through January 6, 2021. Employer sent the claimant a letter on December 11, 2020, asking him to contact them by December 16, 2020, so they could discuss his employment. The claimant did not respond in time. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The claimant's appeal is timely.

The February 26, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

July 30, 2021
Decision Dated and Mailed

cs/scn

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.