

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAZARO G KUOL
Claimant

SMITHFIELD FRESH MEATS CORP
Employer

APPEAL 20A-UI-09245-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timely Appeal

STATEMENT OF THE CASE:

On July 30, 2020, the claimant filed an appeal from the June 15, 2020, (reference 01) unemployment insurance decision that denied benefits based on voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on September 15, 2020. Claimant participated. Employer did not participate. Three calls were made to Becky Jacobson of the employer's human resources department and voicemail messages were left by the undersigned. The employer did not participate.

ISSUES:

Did claimant file a timely appeal?
Did claimant quit with good cause attributable to his employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in December 2009. Claimant last worked as a full-time production worker on April 15, 2020. Claimant was separated from employment on April 15, 2020, when his employer terminated his employment. Claimant claimed a work injury while working at Smithfield Fresh Meats, Inc. The claimant had a compromise settlement with his employer and after he settled the work injury case his employment was ended.

Claimant testified that the fact finding decision was delivered to his neighbor's apartment and he did not receive a copy. Claimant testified he called Iowa Workforce Development and was told he was denied unemployment benefits. Claimant testified he promptly submitted his appeal after learning he had been denied unemployment benefits.

REASONING AND CONCLUSIONS OF LAW:

The first issue to determine is whether claimant's appeal is timely. 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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. E.g. *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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."

The appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion because it was not delivered to claimant. Claimant promptly filed an appeal once he learned he had been denied benefits. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See

Smith v. Iowa Emp't Sec. Comm'n, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

Claimant was discharged after he settled his injury claimant with the employer. There is no evidence that claimant desired to end his employment or that he committed job related misconduct.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 15, 2020, (reference 01) unemployment insurance decision is reversed. Benefits are payable, provided claimant is otherwise eligible. Claimant's appeal was timely.



James F. Elliott
Administrative Law Judge

September 18, 2020
Decision Dated and Mailed

je/sam