

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOEL HUSSEL
Claimant

WINEGARD COMPANY
Employer

APPEAL 20A-UI-08791-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) – Timely Appeal

STATEMENT OF THE CASE:

The claimant, Joel Hussel, appealed the May 20, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a finding Hussel voluntary quit his job with Winegard Company (Winegard) 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 September 10, 2020. Hussel participated personally and testified. Winegard participated through Kerry Hale, who testified.

ISSUES:

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

Is Hussel's appeal timely?

FINDINGS OF FACT:

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

Winegard hired Hussel on February 22, 2016. He worked there full time as a powder coat operator. Winegard ended his employment effective August 6, 2020, due to three absences without notifying the company, in violation of a work rule.

Winegard has an employee handbook that contains work rules and policies. Employees are required to give Winegard notice when they will be absent under work rules. If an employee has

three absences without notifying Winegard, the employee is considered to have voluntarily quit employment under the rules. Winegard gave Hussel a copy of the employee handbook, for which he signed an acknowledgement of receipt.

Hussel's father was having serious health issues. On July 22, 2020, Hussel began a leave of absence to be with his father and family. Hussel's father passed away on July 25, 2020.

The following week, Winegard human resources (HR) attempted to contact Hussel. Hussel did not answer Hale's phone calls. She was unable to leave a voicemail.

Hussel returned to Winegard on July 29, 2020, to ask about extending his leave of absence to see to family issues in the wake of his father's death. He was unable to meet with Hale. A Winegard supervisor told Hussel that if he did not return to work, he would be deemed to have voluntarily quit his job. Hussel went to take care of the family issues with the understanding that, in doing so, he had quit his job.

Winegard HR did not know about Hussel's return to the company or his communication with a supervisor. Because Winegard HR was unable to contact Hussel, it began counting him as absent, without notice, on August 1, 2020. After three such absences without notice in violation of work rules, Winegard considered Hussel to have voluntarily quit his job under work rules.

On August 6, 2020, Hale sent Hussel a letter by certified mail, return receipt requested, informing him that Winegard considered him to have quit his job due his three absences without notice. The U.S. Postal Service (USPS) returned the letter to Winegard because it was unable to certify delivery.

Hussel testified credibly that Iowa Workforce Development (IWD) did not call him for the fact-finding interview regarding his eligibility for unemployment insurance benefits. He never received the unemployment insurance decision that he appealed. Instead, Hussel called the agency repeatedly until someone informed him that the decision found him ineligible for benefits and how to appeal. Hussel then promptly filed his appeal on July 22, 2020, of the May 20, 2020 (reference 01) decision.

REASONING AND CONCLUSIONS OF LAW:

Timeliness of Appeal

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.

If a party does not file an appeal within ten days of the unemployment insurance decision being appealed, it can still be considered timely under rule 871-24.35(2). Here, Hussel did not file an appeal within ten days of the date on which IWD issued the decision. Hussel testified credibly he never received the decision in the mail, which means it is more likely than not that either the agency or the USPS made an error that caused him not to receive the decision. He then promptly filed an appeal after an IWD customer service representative informed him that the decision denied him benefits. For these reasons, Hussel's appeal is timely under agency rules.

Eligibility for Benefits

For the reasons that follow, the undersigned concludes Hussel voluntarily left employment with Winegard without good cause attributable to the employer under the Iowa Employment Security Law, Iowa Code chapter 96.

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(4), it is presumed a claimant voluntarily quit without good cause attributable to the employer if the claimant was absent three times without giving the

employer notice, in violation of a work rule. The same presumption is created by rule 871-24.25(23) if the claimant left voluntarily due to family responsibilities or serious family needs.

Here, the evidence shows that Hussel returned to Winegard to seek an extension of the leave of absence he was on due to the death of his father. Hussel spoke to a supervisor who informed him that if he did not return to work, Winegard would consider him to have voluntarily quit. Hussel chose not to return to work with the understanding he had quit his job.

Winegard HR did not know about the interaction between Hussel and the supervisor. Winegard HR continued to attempt to contact Hussel. After those attempts failed, Winegard HR began counting Hussel as absent without notification on August 1, 2020. After three such absences, Winegard considered Hussel to have quit his job and attempted to send him a letter via certified mail, return receipt requested, notifying him of this.

The record shows that Hussel quit his job to see to family matters. This would qualify as a voluntary quit without good cause attributable to the employer under rule 24.25(23). However, because the supervisor Hussel interacted with did not inform Winegard HR of their interaction, Hussel's employment did not end during the last week of July. Winegard kept him on payroll and the work schedule, only deeming him to have quit after three absences without notice, which disqualifies Hussel under rule 24.25(4).

For these reasons, Hussel voluntarily quit employment without good cause attributable to the employer under section 96.5(1). He is therefore not eligible for benefits under Iowa law.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The May 20, 2020 (reference 01) unemployment insurance decision is affirmed. Hussel voluntarily left employment without good cause attributable to Winegard. Benefits are withheld until such time as Hussel 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 Hussel 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 Hussel is eligible for such compensation for the week claimed.

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



Ben Humphrey
Administrative Law Judge

September 14, 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 PUA, go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>
- To apply for PUA, go to:
<https://www.iowaworkforcedevelopment.gov/pua-application>