

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JUSTIN W TROUT
Claimant

BROWN TANK LLC
Employer

APPEAL 17A-UI-04009-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/12/17
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 22, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 4, 2017. The claimant participated personally. The employer participated through Barbara Demars, administrative assistant. Department exhibit D-1 was admitted into evidence.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant quit the employment for a good cause reason attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a welder and was separated from employment on January 12, 2017, when he quit the employment. Continuing work was available.

The claimant last performed work on January 12, 2017, and went home from his job site, where he suffered a relapse involving a prior addiction. He informed his manager that due to personal issues, he needed to quit the employment. The claimant remained under the influence for several weeks, and then waited as he sought treatment and was admitted to a facility on March 19, 2017 until April 8, 2017. During the interim period between the claimant not being under the influence and awaiting admittance into treatment, the claimant did not attempt to return to work.

An unemployment insurance decision resulting in a disqualification of benefits was mailed to the claimant's last known address of record on March 22, 2017. The claimant was in-patient treatment in Illinois from a period of March 19 until April 8, 2017. The claimant was unable to

send mail or access email to file a timely appeal, but acknowledged he received the decision because it was forwarded while he was in treatment. When he returned from treatment, he went to the local IWD office to look for a job and learned he could still try to file an appeal, and did so at the local office on April 11, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 1, 2017. Because April 1, 2017, was a Saturday, the final day to appeal was extended to Monday, April 3, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is timely.

Iowa Code § 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, subsection 10, 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 ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from unemployment insurance decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d

877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Because the claimant was receiving in-patient care for an extended period, and did not have access (logically, as part of the treatment) to technology to file his appeal, he could not have responded to the notice of disqualification. Upon leaving treatment, he filed his appeal within three days, which the administrative law judge is persuaded is timely and without undue delay. Therefore, the administrative law judge concludes the claimant's appeal shall be considered timely.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The credible evidence presented is that the claimant was participating at an in-patient treatment center period between March 19 through April 8, 2017. Because the claimant was unable to respond to mail while in treatment, he was also not able or available or actively seeking work during the period between March 19 through April 8, 2017. Therefore, he is ineligible for benefits during that period of time.

The final issue to address is whether the claimant voluntarily quit for a good cause reason attributable to the employer.

Iowa Code § 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.

The undisputed evidence is the claimant voluntarily quit his employment due to personal issues and to address a relapse in addiction. The administrative law judge is sympathetic to the challenge the claimant experienced balancing his health/well-being and his employment. However the administrative law judge concludes that based on the evidence presented, the claimant's decision to resign so he could address his personal issues/health may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The March 22, 2017, (reference 01) decision is affirmed. The claimant filed a timely appeal. The claimant was not able and available from the period of March 19 through April 8, 2017. The claimant voluntarily quit the 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn