

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHASITY M BUCKLEY
Claimant

APPEAL 20A-UI-15534-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COBB OIL CO INC
Employer

OC: 03/22/20
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 25, 2020 (reference 01) unemployment insurance decision that denied benefits based upon claimant voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on January 26, 2021. The claimant, Chasity M. Buckley, participated personally. The employer, Cobb Oil Co. Inc., participated through witness Laura Cobb. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 20A-UI-15535-DB-T and 20A-UI-15536-DB-T.

ISSUES:

Is the appeal timely?

Did claimant voluntarily leave the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision dated June 25, 2020 (reference 01) that found the claimant was denied benefits due to her voluntarily quitting work with this employer was mailed to her. The claimant never received the decision in the mail. An appeal deadline of July 5, 2020 was listed on the decision. Claimant filed her appeal on November 9, 2020 after she received a decision in the mail stating that she was overpaid benefits.

Claimant was employed full-time with this employer as a cashier at the employer's convenience store. Her employment began on December 19, 2012 and her employment ended on January 7, 2020 when she voluntarily quit. Claimant had started a new and better full-time position at Temp Associates Iowa Inc. and that was the reason she had told the employer she could no longer continue working full-time. Claimant had started the position at Temp Associates Iowa Inc. on or about January 6, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) 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 department 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.

In this case, the claimant never received the denial decision in the mail that stated she was not eligible for benefits due to a voluntary quitting of work with this employer. As such, the delay in her filing her appeal was due to delay of the United States postal service and the appeal shall be considered timely.

The next issue is whether this separation from employment is disqualifying. The administrative law judge finds that it is not.

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

- a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. **Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund.** This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(emphasis added).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). 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).

Iowa Admin. Code r. 871-23.43(5) provides:

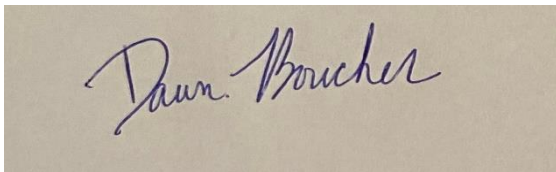
(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. **No charge shall accrue to the account of the former voluntarily quit employer.**

(emphasis added).

In this case, the claimant voluntarily quit for the sole purpose of accepting better employment with Temp Associates Iowa Inc. She did start in a full-time position right away on January 6, 2020. As such, the claimant's voluntarily quit from this employer was not disqualifying because she quit for the sole purpose of accepting an offer of other employment. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The appeal shall be considered timely. The June 25, 2020 (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant is eligible for benefits effective March 22, 2020, so long as she is otherwise eligible. Her separation from employment with this employer is not disqualifying because she voluntarily quit for the sole purpose of accepting better employment. This employer's account shall not be charged pursuant to Iowa Admin. Code r. 871-23.43(5).

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

February 11, 2021
Decision Dated and Mailed

db/ol