

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROGER K ELLIOTT
Claimant

AMVC EMPLOYEE SERVICES LLC
Employer

APPEAL 22A-UI-09233-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1R)

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On April 12, 2022, claimant Roger K. Elliott filed an appeal from the July 29, 2021 (reference 02) unemployment insurance decision that denied benefits based on a determination that claimant voluntarily quit employment for personal reasons. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Friday, May 27, 2022. Appeal numbers 22A-UI-09233-LJ-T, 22A-UI-09234-LJ-T, and 22A-UI-09235-LJ-T were heard together and created one record. The claimant, Roger K. Elliott, participated. The employer, AMVC Employee Services, L.L.C., participated through Lindsey Cose, Director of Human Resources. Department's Exhibits D-1 and D-2 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the claimant file a timely appeal?
Was the claimant discharged from employment for disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for AMVC Employee Services on February 23, 2009. Claimant initially worked full-time hours as a herdsman. At some point during his tenure, he transitioned to a part-time herdsman position. Claimant's employment ended on August 20, 2020, when he was discharged for insubordination.

Claimant last reported to work on May 26, 2020. Claimant had been off work for a period of time due to the COVID-19 pandemic and then returned to work briefly in May 2020. After May 26, 2020, claimant went on a leave of absence in part to protect his health and in part to watch his granddaughter.

During the period that claimant was on a leave of absence, the employer was struggling to meet its staffing needs. As a livestock production facility, the employer's business was not affected by the pandemic and demand remained constant for its product. Claimant's manager had

requested additional staff from the production manager. The production manager replied that he could not hire any additional people because “on paper,” the manager was fully staffed. Cose explained that the manager appeared to be fully staffed because claimant remained an employee on paper, even though he was not working any hours.

The employer allowed claimant a full twelve-week leave of absence, pursuant to its Leave of Absence policy. This granted claimant leave through August 18, 2020. At that point, claimant’s manager called him and told him that the employer needed him to return to work. Claimant responded that he was making more money staying home and watching his granddaughter than he would make working, so he was not going to return. When the manager reported this back to Cose, she was upset by claimant’s refusal to work.

On August 20, 2020, claimant’s manager contacted him and again instructed him to return to work. Claimant was notified at that time that he would be discharged if he did not return to work. He refused to return to work. Therefore, the employer ended claimant’s employment.

The unemployment insurance decision was mailed to the claimant’s address of record on July 29, 2021. The claimant did not receive the decision. Claimant first learned that he was disqualified from receiving benefits when he received the overpayment decisions mailed April 5, 2022, and April 6, 2022. Claimant filed his appeal within ten days of receiving those decisions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying misconduct. Benefits are withheld.

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

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

- (b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' 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. IDJS*, 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. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Here, the claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without 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). The claimant timely appealed the overpayment decisions, which were the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is eligible for benefits based on his separation from employment. Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of

employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In insubordination cases, the reasonableness of the employer's demand in light of the circumstances must be evaluated, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The key to such cases is not the worker's subjective point of view but "what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause).

For example, in *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980) an employee refused to sign a warning to acknowledge that she understood why she was being warned. The Court found the refusal to be disqualifying as a matter of law, and it did not focus on whether the warning was justified or not. *Green* at 655. The claimant's actions in refusing to do as told "show[ed] an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer." 871 IAC 24.32(1)(a).

Here, the claimant refused to return to work when the employer contacted him and asked him to return. The employer's request was reasonable: claimant's work as a herdsman was needed, as demand for the employer's product was constant. Claimant's refusal to return was unreasonable. The credible testimony in the record established that claimant simply wanted to stay at home, watch his granddaughter, and collect unemployment benefits, as that was more lucrative than returning to work. Claimant's refusal to come back to work demonstrated an intentional and substantial disregard of his obligations to the employer, and it amounts to disqualifying misconduct. Benefits are withheld.

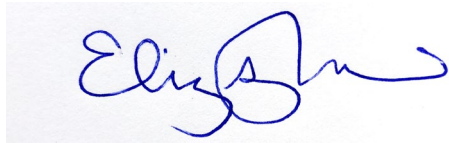
The issues of whether claimant was able to work and available for work while claiming unemployment insurance benefits and whether he engaged in misrepresentation while claiming unemployment insurance benefits are remanded to the Benefits Bureau of Iowa Workforce Development for further investigation.

DECISION:

The July 29, 2021 (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. 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.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development to investigate and determine whether claimant was able to and available for work while claiming unemployment insurance benefits and to investigate and determine whether claimant engaged in misrepresentation while claiming unemployment insurance benefits, with further referral to the Investigations and Recovery Unit if necessary.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

June 6, 2022
Decision Dated and Mailed

lj/lj