

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID Q. WRIGHT
Claimant

APPEAL 22A-UI-02595-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERTCH CABINET MFG INC.
Employer

**OC: 03/14/21
Claimant: Appellant (5)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.5(11)- Incarceration Disqualification
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.26(17)-Incarceration Disqualification
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On January 4, 2022, the claimant/appellant filed an appeal from the May 10, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant voluntarily quitting on September 29, 2020. The parties were properly notified about the hearing. A telephone hearing was held on February 21, 2022. Claimant participated at the hearing. Employer participated through Benefits Coordinator, Mark Melcher. Exhibit 1 was admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

Is claimant's appeal timely?

Is the claimant able to and available for work?

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on May 10, 2021. The appellant did not receive the decision. The first notice of disqualification was claimant's communication with a representative at the Iowa Workforce Center in January 2022. The appeal was sent within ten days after claimant spoke with a representative at the Iowa Workforce Center on January 4, 2022.

Claimant began working for employer on April 29, 2019. The claimant was employed full-time as a component machining and assembly apprentice. Claimant worked Monday through Thursday from 6:00 a.m. until 4:00 p.m.

Claimant last worked for the employer on September 23, 2020. On September 24, 2020, claimant was arrested for a probation violation. On September 24, 2020, claimant notified his immediate supervisor Dustin Mentel that he had been arrested. The claimant did not call in each day that he missed work. On September 29, 2020, claimant was discharged from the employer for being a no call, no show on Friday, September 25, 2020, Monday, September 28, 2020, and Tuesday, September 29, 2020. (Exhibit 1, pg. 1). The claimant was aware the employer had a no call, no show policy. The policy is contained in the employer's employee handbook. The claimant signed an acknowledgement of receipt of the employee handbook on April 26, 2019.

Claimant plead guilty to a probation violation. The claimant was released from jail in November 2020 and contacted the employer about the status of his job. The employer said they would call him back. The employer never contacted the claimant about the status of his job.

REASONING AND CONCLUSIONS OF LAW:

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

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 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, 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 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 appellant 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 filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant voluntarily quit his employment. For the reasons stated below the Administrative Law Judge finds that claimant did not voluntarily quit, however, claimant is denied benefits because of his incarceration.

Iowa Code section 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(4) 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of a company rule.

Iowa Code section 96.5(11) provides:

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

11. Incarceration--disqualified.

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

- (1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.
- (2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.

- (3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.
- (4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection shall continue 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. 871-24.26(17) provides:

Separation due to incarceration.

a. The claimant shall be eligible for benefits if the department finds that all of the following conditions have been met:

- (1) The employer was notified by the claimant prior to the absence;
- (2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the claimant was found not guilty of all criminal charges relating to the incarceration;
- (3) The claimant reported back to the employer within two work days of the release from incarceration and offered services to the employer; and
- (4) The employer rejected the offer of services.

b. If the claimant fails to satisfy the requirements of subparagraph 24.26(17) "a"(1), the claimant shall be considered to have voluntarily quit the employment if the claimant was absent for three work days or more under subrule 24.25(4). If the absence was two days or less, the separation shall be considered a discharge under rule 871—24.32(96). If all of the conditions of subparagraphs 24.26(17)"a"(2), (3) and (4) are not satisfied, the separation should be considered a discharge under rule 871—24.32(96).

This subrule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Irving v. Employment Appeal Board*, 883 N.W.2d 179.

When the separation from employment is based on incarceration, the claimant has burden of proving the claimant is not disqualified for benefits under Iowa Code section 96.5(11). Iowa Code section 96.6(2).

In this case, claimant was separated from employment due to the fact that he was incarcerated. If the preponderance of the evidence shows that "but for" the incarceration the claimant would not have been separated from employment, then claimant will be disqualified from receiving benefits unless and until the four conditions for avoiding such a disqualification are all satisfied. Here, claimant has not met those conditions. Claimant did not notify his employer prior to each of his absences from work. Additionally, claimant has not established the charges filed against him were dismissed or that he was found not guilty. Claimant testified that he returned to the employer when he was released from jail but he could not testify with certainty if it was within two days of his release. Claimant did not meet the requirements of the law cited above and therefore is

disqualified from receiving unemployment insurance benefits based on this separation from employment due to incarceration. Benefits are denied.

Since claimant is disqualified from receiving benefits due to incarceration, the issue of whether claimant is able to work and available for work is moot.

DECISION:

The claimant's appeal is timely.

The May 10, 2021, (reference 01) decision is modified with no change in effect. Claimant's separation due to incarceration was for disqualifying reasons. Benefits are withheld until such time as the he works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The issue of whether claimant is able to work and available for work is moot.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

March 9, 2022
Decision Dated and Mailed

cs/scn

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. 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.