

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DARRICK M JOHNSON
Claimant

APPEAL NO: 15A-UI-00354-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US GRAIN STORAGE SYSTEMS INC
Employer

OC: 11/23/14
Claimant: Appellant (1)

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 18, 2014 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit this employment for reasons that do not qualify him to receive benefits. The claimant participated at the February 25 hearing. Jennifer Briggs-Moen appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing late appeal?

Did the claimant voluntarily quit this employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2014. The claimant worked full time building grain bins. The job required the claimant to work out of town. The last day the claimant worked was November 1. On November 2, the claimant sent the employer a text asking if he could be laid off for two weeks. The claimant learned he had to have an evaluation that would take two weeks. As a result of the mandatory evaluation, the claimant was unable to go out of town to work. The claimant understood he would be done with the evaluation in two weeks. The employer told the claimant to report to work on a Monday in two weeks to find out where he would be working. The employer also told the claimant that the employer does not lay off employees. The employer had continuing work for the claimant to do in early November.

The evaluation took longer than two weeks. As of February 25, the claimant was in treatment and understood he would complete the treatment in two weeks.

The claimant established a claim for benefits during the week of November 23, 2014. A December 18, 2014 determination was mailed to the parties. The determination disqualified the claimant from receiving benefits and held the employer's account exempt from charge. The determination also informed the parties an appeal had to be filed on or before December 28, 2014.

The claimant received the December 18 determination before Christmas. He did not understand the determination. He went to his local Workforce office on January 8, 2015, and filed an appeal.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the appeal was filed after the December 29, 2014 deadline for appealing expired. Since December 28 was a Sunday, the deadline to appeal was automatically extended to Monday, December 29, 2014.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant testified he received the December 18 determination sometime before Christmas. He had a reasonable opportunity to file a timely appeal, but did not.

The claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses a delay in filing an appeal. Even though the claimant may not have understood the importance of appealing by December 29 and may not have understood the consequence of filing a late appeal, he did not establish a legal excuse for filing a late appeal. Therefore, the Appeals Bureau does not have any legal authority to make a decision on the merits of the claimant's appeal. This means the December 18, 2014 determination cannot be changed and the claimant remains disqualified from receiving benefits.

In the alternative, assume the claimant established a legal excuse for filing a late appeal. A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(1), (2)a. When the claimant asked to be laid off on November 2 when there was continuing work for him, he voluntarily quit when he was unable to continue this employment. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The claimant was in a difficult situation in early November. He did not want to stop working, but because of compelling personal legal issues, the claimant could not work out of town. The claimant established personal reasons for quitting, but these reasons do not qualify him to receive benefits. As of November 23, 2014, the claimant is not qualified to receive benefits.

DECISION:

The representative's December 18, 2014 determination (reference 02) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Bureau does not have any legal authority to address the merits for the claimant's appeal. This means the December 18 determination cannot be changed. As of November 23, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs