

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ADAM BURKHEAD
Claimant

APPEAL 21A-UI-12226-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WASTE SOLUTIONS OF IOWA LLC
Employer

OC: 06/14/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On May 6, 2021, the claimant/appellant filed an appeal from the August 25, 2020, (reference 01) unemployment insurance decision that denied benefits based on claimant voluntarily quitting. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2021. Claimant participated at the hearing. Employer did not register a number to participate in the hearing prior to the hearing and therefore did not participate in the hearing. Claimant's Exhibit A was admitted into the record.

ISSUES:

Was the claimant's appeal timely?
Was the separation a voluntary quit with good cause attributable to the employer?

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 August 25, 2020. The appellant did not receive the decision and did not know Iowa Workforce Development had made a decision on his claim. The claimant received correspondence dated April 26, 2021, from Iowa Work Force Development which prompted him to appeal. The deadline for appeal on the April 26, 2021, letter was dated May 6, 2021. The appeal was sent within ten days after receipt of that decision.

Claimant began working for employer on February 2, 2020. Claimant last worked as a full-time toilet technician. Claimant was separated from employment on May 6, 2020, when he submitted his letter of resignation. (Exhibit A).

Claimant is a combat veteran that has Degenerative Disk Disease and Post-traumatic Stress Disorder. When claimant accepted the job he told the employer he would need an hour each week to go to doctor appointments.

Eventually the claimant became upset with the employer because they were not accommodating his request for an hour each week to visit a physician. The claimant was also concerned about how the employer maintained its company vehicles and equipment because they would have employees operate machinery the claimant thought was unsafe or not working properly. The employer did not provide protective gear for their employees to wear when they sprayed out portable toilets. Claimant had requested a face shield to wear and the employer provided him with a neck gator. Claimant was also upset because the employer would water down hand sanitizer and sell it to their customers. The claimant voluntarily resigned from the employer. (Exhibit A).

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.

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 for good cause attributable to the employer. The administrative law judge concludes he did not.

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(21) 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:

- (21) The claimant left because of dissatisfaction with the work environment.

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). 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).

Ultimately claimant was unhappy with the work environment because they did not provide him with the proper cleaning gear, access cards, and they did not maintain the equipment in a manner the claimant agreed with and that is why he resigned from the employer. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The Claimant's appeal is timely.

The August 25, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his 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.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

July 29, 2021
Decision Dated and Mailed

cs/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.