

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT G LOCKEY
Claimant

APPEAL NO. 08A-UI-10570-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYMENT CONNECTIONS INC
Employer

**OC: 07/13/08 R: 01
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 8, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on December 1, 2008. Claimant participated. Employer participated through James Kitterman, Jeff Merryman and Robert Seggerman of Employment Connections, Inc. and Mike Lamb and Josh Smith of Landmark Products, and was represented by Dave Stein, Attorney at Law.

ISSUE:

The issue is whether claimant's appeal was timely and if he quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's address of record on October 8, 2008. The claimant presented his appeal to the Spencer Iowa Workforce Development office on October 17, 2008 and it was faxed to the fact-finding fax number rather than the appeals bureau fax number listed on the decision. The fact-finding office did not forward the appeal to the appeals bureau and the Spencer Iowa Workforce Development office sent the appeal again on November 12, 2008.

Claimant was hired as a full-time laborer and worked on an assignment for Landmark Products from August 4, 2008 until September 12, 2008 when he quit because he "figured they did not want me there" but was not told he was laid off due to a lack of work or that he was discharged. He was also concerned because he could not keep up with the line pace and could not vacuum flour as fast as he thought he should because of inadequate training but was not disciplined because of it and continued work was available. Another worker threw a closed utility knife in his direction on or about August 20, 2008 but claimant did not report the incident until the day he gave his notice to quit on September 12. After employer asked him to move his truck so they could mow he failed to return to work for the two-week notice period. Employment Connections held an exit interview with claimant on September 17 and offered him another assignment at

RR Donnelley on September 25, which claimant declined because of a medical appointment. He has since found work elsewhere through another temporary employment agency.

REASONING AND CONCLUSIONS OF LAW:

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

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 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, subsection 10, 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 claimant filed an appeal with the assistance of the Spencer Iowa Workforce Development office, which sent the appeal to the wrong location and that office did not forward it to the correct office so a second appeal was filed. Since the delay was because of Iowa Workforce Development error, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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.

871 IAC 24.25(33) 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 § 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 § 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Claimant was not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment if employer had or should have had reasonable knowledge of the condition. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The knife incident was not brought to employer's attention until the date of the separation and claimant's decision to quit and not work the notice period because he erroneously thought the assignment did not want him to work there was not based on fact and was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The October 8, 2008, reference 01, decision is affirmed. The claimant's appeal is timely. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css