

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN L HAYES

Claimant

APPEAL NO: 11A-UI-02386-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EDEN ENTERPRISES INC

Employer

OC: 03/07/10

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 February 15, 2011 determination (reference 08) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Ed Heck, Jerry Richlings and Laura Hernandez 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 a late appeal?

Did the claimant voluntarily quit his 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 July 2010 as a part-time employee. The claimant became a full-time employee in August. During his employment, there were times the claimant did not call or report to work for a couple of days. The employer did not realize the claimant needed treatment.

In December the claimant was working in the seed house. His last day of work was December 17, 2010. He called and talked to Heck on Monday, December 20, at 7:00 a.m. The claimant told Heck he was ill; he was going to the doctor and would have his doctor call him. The claimant was going to enter or was in a hospital's detox center when he talked to Heck. The claimant was released after four days and then started out-patient treatment. The claimant's doctor did not contact the employer. The claimant did not contact the employer until the second week of January.

The second week of January, the claimant went to the workplace and talked to Heck. Heck told him he was no longer considered an employee and another person had been hired to replace him. When the claimant did not call or report work on December 21, 22 and 23, Heck concluded the claimant had abandoned his job and processed the necessary paperwork to end his employment.

After he talked to Heck, the claimant then talked to Richlings. The claimant learned the employer was not going to rehire him. The claimant reopened his claim for benefits during the week of January 9, 2011. On February 15, 2011, a representative's determination was mailed to the claimant and employer. The determination held the claimant disqualified from receiving unemployment insurance benefits and informed the parties an appeal had to be filed or postmarked on or before February 25, 2011.

The claimant received the representative's determination on Saturday, February 26, 2011. He has problems getting his mail delivered to his current mailing address. The claimant filed his appeal at his local Workforce office on Monday, February 28, 2011.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 claimant's appeal was filed after the February 25 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal because he received the determination after February 25.

The claimant established that his failure to file a timely appeal was due to an action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to make a decision on the merits of the 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. The claimant did not call or report to work for more than ten days. The claimant's failure to tell the employer he was being hospitalized, did not tell the employer how long he would be gone and then failed to contact the employer immediately after he was released from the hospital are all factors that indicate the claimant did not intend to return to work. The claimant abandoned his 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 law presumes a claimant voluntarily quits

employment without good cause when he leaves for compelling personal reasons and is gone more than ten working days. 871 IAC 24.25(20). It was not unreasonable for the employer to conclude the claimant had abandoned his job when the employer did not receive a call from the claimant's physician, the claimant had previously failed to call or report to work for several days and the claimant did not have any contact with the employer for more than ten days. The claimant established personal reasons for quitting and made the best decision for his well-being. For unemployment insurance purposes, the claimant quit for reasons that do not qualify him to receive benefits. As of January 9, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's February 15, 2011 determination (reference 08) is affirmed. The claimant did not file a timely appeal, but established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of January 9, 2011. 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 is exempt from charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css