

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALASSANE SAMB

Claimant

APPEAL NO: 13A-UI-01144-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DATA BUSINESS EQUIPMENT INC

Employer

OC: 12/30/12

Claimant: Respondent (4)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.25(38) – Resignation Notice Period
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 22, 2013, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on February 26, 2013. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Toby Geiger, President and Josh Banta, Service Manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 and Employer's Exhibit One was admitted into evidence.

ISSUES:

The issues are whether the employer's protest is timely, whether the claimant voluntarily left his employment with good cause attributable to the employer and whether the claimant is entitled to unemployment insurance benefits for the length of his notice period.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on January 2, 2013, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer did not file a protest until January 15, 2013, which is one day after the ten-day period had expired. The employer's notice of claim was mailed to its third party payroll service company and the employer did not receive the protest form from that company until January 15, 2013, at which time it filed its protest (Department's Exhibit D-1). The employer has asked the Department if time sensitive material could be sent to its address but was told the documents had to be mailed to its designated payroll tax company. Given the fact the employer filed its protest the day it received it, the administrative law judge concludes the employer's protest is timely.

The claimant was employed as a full-time field technician for Data Business Equipment from October 10, 2011 to December 28, 2012. On November 7, 2012, he submitted a resignation notice effective March 29, 2013 (Employer's Exhibit One). The claimant felt he was "not a good fit" with the team and mentioned an incident he described as discriminatory regarding his race that occurred in June 2012 but did not inform the employer until asked for further detail about why he was leaving his employment November 7, 2012.

The claimant gave the employer five months' notice of his resignation, effective March 29, 2013. The employer decided to accept his notice effective six weeks after submission, which was December 28, 2012. The employer does not object to the claimant receiving benefits throughout the duration of his notice period.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2. In this case the claimant did not participate in the hearing or present any evidence of a good cause reason attributable to the employer for his leaving his employment. He mentioned a discriminatory remark made in June 2012 but never notified the employer of his co-worker's insensitive statement until after he submitted his resignation notice. Under these circumstances, the administrative law judge must conclude the claimant has not met his burden of proving his leaving was for good cause attributable to the employer. Therefore, benefits are denied.

871 IAC 24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation,

no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The remaining issue is the claimant's resignation notice period. The claimant gave an extremely long resignation effective date. Generally, if an employee leaves his employment without good cause and is not allowed to finish his notice period, he receives unemployment benefits through the end of the effective date of his notice. In this case, although the claimant's notice period was five months long, the employer does not object to his receiving benefits for that period of time. The law does not contemplate a resignation notice of this length but generally considers a reasonable period of notice to be two weeks in duration. Because allowing the claimant to receive benefits during the five months of his notice period does not violate 871 IAC 24.25(38), the administrative law judge concludes the claimant is allowed benefits through the week ending March 30, 2013, but benefits are denied after that date because the claimant voluntarily left his employment without good cause attributable to the employer as that term is defined by Iowa law.

DECISION:

The January 22, 2013, reference 02, decision is modified in favor of the employer/appellant. The employer's protest is timely. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are allowed through the week ending March 30, 2013, when the claimant's notice period ends. Benefits are denied effective the week ending April 6, 2013, until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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