

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERICA L BLEEKER
Claimant

BARR-NUNN TRANSPORTATION INC
Employer

APPEAL 17A-UI-00254-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/11/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 27, 2016, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on January 30, 2017. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate.

ISSUES:

Is the appeal timely?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant received the unemployment insurance decision on Saturday, January 7, 2017, and filed her appeal online on Monday, January 9, 2017.

Claimant was employed as a full-time over-the-road driver August 17, 2016, through November 29, 2016. Her last day of work was November 27, 2016. After a month on the road she had earned and was granted home time from November 27 through 29. Her sister had been injured in a car accident. The employer called her on November 28 and told her to get back in the truck the morning of November 29, the day before she was scheduled to return to work. She explained that she had a family situation and could return as planned on November 30. The employer denied the request twice because it had “too much freight.” Claimant had earned one day off for each week on the road and had been out a month. In the past the employer had also tried to short her earned home time off.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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 did not have an opportunity to appeal the unemployment insurance decision by the deadline because the decision was not received in a timely fashion. Without timely 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 the appeal within one business day of receipt. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with 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.

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).

Since claimant had urgent business to attend to for fewer than ten days, employer would not grant the full amount of earned and approved time off, and claimant offered to return on the

originally scheduled date one day later and no work was available, the separation was with good cause attributable to the employer.

DECISION:

The December 27, 2016, (reference 01) unemployment insurance decision is reversed. Claimant's appeal is timely. She voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs