

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHRISTOPHER W BIRD**  
Claimant

**RONALD D THUERAUF**  
Employer

**APPEAL 17A-UI-11153-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/28/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 29, 2017 (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit to seek other employment. The parties were properly notified of the hearing. A telephone hearing was held on November 16, 2017. The claimant, Christopher W. Bird, participated. The employer, Ronald D. Thuerauf, did not register a telephone number at which to be reached and did not participate in the hearing.

**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: Claimant was employed full time, most recently as an over-the-road truck driver from September 2016 until January or February 2017, when he quit his employment. Claimant described a pattern of being treated differently from his co-workers. Claimant's co-workers all drove tractor-trailers owned by the employer. In contrast, claimant was given a vehicle to drive that was owned by Mike, who was somehow affiliated with the employer. This trailer would not slide, which meant it was impossible for claimant to adjust the axles on the trailer and accommodate loads of varying weights. Claimant brought this issue to the employer's attention and to Mike's attention, and they refused to fix the problem. Shortly before claimant quit, he stopped at a scale in Illinois and received a \$600.00 ticket for weighing 2,500 pounds over axle weight, due to the axles not sliding. Claimant called Mike to report the issue, and Mike refused to pay the \$600.00 ticket. The employer then began deducting large amounts from claimant's paycheck to pay the ticket. Claimant objected to this, as he had no control over the underlying issue that led to him receiving the ticket. Claimant's final paycheck before he quit was only \$250.00, due to the employer pulling out several hundred dollars toward the ticket. This was the final incident that led to claimant quitting. Continued work was available, had claimant not quit his job.

The unemployment insurance decision was mailed to the appellant's address of record on June 29, 2017. The appellant did not receive the decision. Though claimant was on the road working

at the time the decision would have been received, he lives with someone who routinely opens and advises him of his mail. The first notice of disqualification was when claimant received documentation regarding how to repay the overpayment that resulted from this disqualification. The appeal was sent immediately after that communication.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant separated from employment with good cause attributable to the employer. Benefits are allowed.

The first issue to be considered in this appeal is whether the appellant'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 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 claimant is qualified for benefits based on the separation. 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.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

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 notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Here, claimant established through uncontested testimony that the employer held him responsible for paying a ticket that was not his fault. Claimant was given faulty equipment to operate by the employer, and then the employer unfairly blamed him when the trailer was overweight. This amounts to a detrimental working environment. Claimant has established good cause for quitting his employment that is fairly attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

#### **DECISION:**

The June 29, 2017 (reference 03) unemployment insurance decision is reversed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn