

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHNNY R BRYANT
Claimant

APPEAL 17A-UI-00814-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**THE FLIGG CORPORATION
CONTROLLED ASBESTOS INC**
Employer

**OC: 04/10/16
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 21, 2016, (reference 03) 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 February 14, 2017. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate. Department's Exhibit D-1 was received.

ISSUES:

Is the appeal timely?
Was the claimant laid off due to a lack of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant did not receive the December 21, 2016, unemployment insurance decision until the week of the Dr. Martin Luther King, Jr. holiday and reported to the local office to file his appeal Monday of the next week on January 23, 2017.

Claimant was employed with The Fligg Corporation through November 18, 2016, when he was permanently laid off. He found employment through the union hall with Core Structural Services and began work there on November 28, 2016. He was laid off for the season the week-ending January 14, 2017. He has not requalified for benefits since the separation from Fligg.

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). He filed the appeal within a week of receipt. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

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.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. *Layoffs.* A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The separation from Fligg was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The December 21, 2016, (reference 03) unemployment insurance decision is reversed. The claimant's appeal is timely. He was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs