

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW RAHN
Claimant

IOWA BEVERAGE SYSTEMS INC
Employer

APPEAL 22A-UI-07574-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/31/21
Claimant: Appellant (1R)**

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

STATEMENT OF THE CASE:

The claimant/appellant, Andrew Rahn, filed an appeal from the March 26, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on May 11, 2022. The hearing was held with Appeals 22A-UI-07575-JC-T and 22A-UI-07576-JC-T. The claimant participated personally. Andrea Meier testified for claimant. The employer/respondent, Iowa Beverage Systems Inc., participated through Trevor Gosselink, vice president of HR and administration. Official notice of the administrative record was taken. Department Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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, the administrative law judge finds: Claimant began work for Hahn Ready Mix (not this employer) on July 13, 2020. He was working for Hahn Ready Mix when he began his employment for this employer, Iowa Beverage Systems Inc., on October 5, 2020. Claimant was employed for both employer for four days until claimant voluntarily quit his employment as a full-time delivery driver with Iowa Beverage Systems on October 8, 2020. Claimant quit the employment after deciding he wanted to stay at Hahn Ready Mix only. Continuing work was available with Iowa Beverage Systems Inc.

Claimant worked for Hahn Ready Mix until he filed his claim for unemployment insurance benefits effective January 31, 2021. The issue of whether claimant may have earned sufficient wages at Hahn Ready Mix for the period of October 8, 2020 and filing his claim effective January 31, 2021, has not yet been addressed by the Benefits Bureau.

An initial decision (reference 01) was mailed to the claimant/appellant's address of record on March 26, 2021. The decision contained a warning that an appeal must be filed by April 5, 2021. The decision also directed the appellant to call the customer service line for assistance. Claimant stated he called IWD and was given incorrect advice. Appellant did not appeal until he received the March 28, 2022 decisions stating he had been overpaid benefits. Claimant filed his appeal using the online form on March 30, 2022 (Department Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

In this case, claimant contacted IWD upon receiving the initial decision and was given incorrect guidance or information by an IWD representative. Therefore, based on the evidence presented, the administrative law judge concludes that claimant's delay in filing his appeal was *due to an Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue to address is whether claimant voluntarily quit the employment with good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 871-24.25(12) 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:

(12) The claimant left without notice during a mutually agreed upon trial period of employment.

The claimant has the burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

In this case, claimant may have had personally compelling reasons to quit the employment but has not established it was for a good cause reason attributable to the employer, according to Iowa law. Benefits are withheld.

The issue of whether claimant may have earned sufficient wages at Hahn Ready Mix for the period of October 8, 2020 and filing his claim effective January 31, 2021, is remanded to the Benefits Bureau for an initial investigation.

DECISION:

The March 26, 2021 (reference 01) initial decision is affirmed. The appeal is timely. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

REMAND: The issue of whether claimant may have earned sufficient wages at Hahn Ready Mix for the period of October 8, 2020 and filing his claim effective January 31, 2021, is remanded to the Benefits Bureau for an initial investigation.



Jennifer L. Beckman
Administrative Law Judge
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Fax 515-478-3528

May 20, 2022
Decision Dated and Mailed

jlb/scn

NOTE TO CLAIMANT:

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>