

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ARMANDO MUNGUIA
Claimant

FAGEN INC
Employer

APPEAL 17A-UI-02951-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/15/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Armando Mungia (claimant) filed an appeal from the March 1, 2017, reference 02, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment due to personal reasons exceeding ten days which is not a good cause reason attributable to Fagen, Inc. (employer). The parties were properly notified about the hearing. A telephone hearing was held on April 10, 2017. The claimant participated. The employer participated through Human Resources Assistant Jessica Savoie. Interpretation services were provided by Annalise (employee number 9300) from CTS Language Link. Department's Exhibits D1 through D3 were received.

ISSUES:

Is the appeal timely?

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Scaffold Builder beginning most recently on March 21, 2016, and his last day worked was December 7, 2016. The claimant requested and received approval for time off from December 8 through December 26, 2016 because his grandfather, who lives in Mexico, was sick. The claimant signed a statement before he left that authorized his supervisor Javier Menchaca to pick up his tools if he was unable to return from Mexico.

The claimant did not leave for Mexico until December 18, 2016, as he was unable to locate his passport. The claimant's grandfather's health varies and the claimant was in Mexico watching him. The claimant did not return on December 26, 2016 as he had arranged. The claimant did not notify the employer of his continued absence as neither he nor anyone else with him had a cell phone that would connect with a phone number in the United States. Shortly thereafter, the

employees on the claimant's job site were laid off work and did not return to work until after January 1, 2017.

The claimant did not show up to work or notify the employer of his absence on January 3 and 4, 2017. The claimant returned to the United States on January 16, 2017. He did not contact Menchaca until January 18, 2017. Menchaca told him that he needed to speak with the job superintendent to determine if there was work available. The claimant contacted the superintendent the following day and was told there was no work available.

The unemployment insurance decision was mailed to the appellant's address of record on March 1, 2017 and contained a warning that an appeal must be filed by March 11, 2017. The appellant did not receive the decision until March 9, 2017. The claimant contacted his local office as he had earlier been told that he was eligible to receive benefits. The local office did not have an interpreter available that day. The claimant scheduled an appointment with the local office to come in on March 14, 2017, when someone would be available. The claimant filed his appeal on March 14, 2017 after speaking with his local office with assistance of an interpreter.

REASONING AND CONCLUSIONS OF LAW:

Is the appeal timely?

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

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 claimant received his decision within the timeframe allotted. However, he was unable to understand the decision after being told earlier that he was eligible for benefits. He was able to speak with someone at the local office with the assistance of an interpreter on March 14, 2017 which is the same day he filed his appeal. The appellant did not have an opportunity to appeal the fact-finder's decision prior to March 14, 2017 due to a language barrier. 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 his appeal within ten days of receiving and understanding the fact-finder's decision. The claimant's appeal was timely filed.

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from employment but voluntarily quit without good cause attributable to the employer. Benefits are denied.

Iowa law disqualifies individuals who voluntarily quit without good cause attributable to the employer from receiving unemployment insurance benefits. Iowa Code § 96.5(1). There is an exception to this which states:

The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Code § 96.5(1)c. However, individuals who leave employment for compelling personal reasons exceeding ten days or due to family responsibilities are presumed to have quit without good cause attributable to the employer. See Iowa Admin. Code r. 871-24.25.

The 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).

The claimant notified his employer that he was needed in Mexico to be with his ill grandfather. However, he did not leave for Mexico until ten days after his approved absence began. The claimant went to Mexico to watch his grandfather, but did not provide any other details about why his presence was necessary to care for his grandfather. Additionally, the claimant did not immediately offer his services to his employer, as he waited two to three days to notify the employer he had returned and to speak with someone about getting his job back. The claimant has not met the burden to show he meets the exception that would allow him to receive benefits.

The claimant was on an approved leave of absence, but then failed to return or notify the employer of his need to be absent. The claimant abandoned his job for personal reasons

exceeding ten days or due to family responsibilities. While the claimant's decision to leave his employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The claimant's appeal is timely. The March 1, 2017, reference 02, unemployment insurance decision is affirmed. The claimant voluntarily left the employment without 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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