

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN T WILLIAMS
Claimant

PARCO LTD
Employer

APPEAL 20A-UI-07198-HP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant John Williams filed an appeal from a May 29, 2020 (reference 03) unemployment insurance decision that denied benefits for voluntarily quitting his work with Parco Ltd. (“Parco”) on November 15, 2019. The parties were properly notified of the hearing. A telephone hearing was held on August 4, 2020. Williams appeared and testified. Juliet Diaz appeared and testified on behalf of Parco. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Parco operates a Wendy’s restaurant in Cedar Rapids, Iowa. Williams commenced part-time employment with Parco on November 15, 2019. Williams went to work on November 15, 2019, for orientation. Williams did not return to Parco.

Williams testified Parco offered him full-time employment as a team member. He could not recall who his immediate supervisor was. Williams testified on November 15, 2019, his supervisor told him he would receive a call when he was supposed to come in to work the next time and he reported he did not receive a call and that he never received the schedule.

Diaz is a human resources manager for Parco. Diaz testified during orientation, all Parco employees receive a copy of their schedule for the next week. She reported Parco hired Williams as a part-time crew member. Diaz testified all crew members are part-time. There are no full-time crew members. Kavona McDaniel was Williams’s immediate supervisor.

Diaz testified on November 15, 2019, Williams received his training schedule from Parco. Parco scheduled him to work five hours per day on November 18, 19, 20, 21, and 22, 2019. The

manager penciled Williams's schedule in the printed schedule. Two other employees also started with Williams and were penciled in the schedule.

Diaz testified Williams never returned to Parco after his orientation on November 15, 2019. Parco considered he voluntarily quit his position. Diaz testified Parco left Williams active on the system until December 9, 2019, hoping Williams would come back to work or provide Parco an explanation as to what was going on. Diaz reported the Parco location where Williams worked has been looking for employees throughout 2020, including during the outbreak of Covid-19.

The conflicting testimony between Williams and Diaz raises an issue of credibility. During the hearing I assessed the credibility of Williams and Diaz by considering whether their testimony was reasonable and consistent with other evidence I believe, whether they had made inconsistent statements, their "appearance, conduct, memory and knowledge of the facts," and their interest in the case. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). I do not find Williams's testimony reasonable and consistent with the other evidence I believe.

Williams has an obvious interest in the outcome of this case. He worked for Parco for one day and he is seeking unemployment benefits. Diaz works for Parco and she has an interest in this case. During the hearing, I had the opportunity to listen to the competing testimony under oath. I did not find Williams to be a credible witness. Williams testified Parco offered him full-time employment. Diaz testified all crew members are part-time. Williams could not recall who his supervisor was. Williams testified he did not receive a copy of his schedule. Diaz testified two other employees started with Williams and were penciled in on the schedule and attended work. Diaz reported Williams received his schedule during his orientation on November 15, 2019. He never called to ask if he was on the schedule. I find Williams knew what his schedule was and that he never returned to Parco.

Diaz testified Parco has a policy published in the employee handbook that if an employee fails to show up or call in for three consecutive days, the employee is considered to have voluntarily quit the employee's employment. Diaz reported Williams acknowledged he received a copy of the employee handbook on November 15, 2019.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

(emphasis added).

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. Unemployment Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. 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). Williams testified he has had problems with his mail and that he did not receive the decision, reference 03. I found Williams established good cause for filing a late appeal.

Iowa Code section 96.5(1) provides an individual "shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . . If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "voluntary quit" means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code -24.25(4) 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:

24.25(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

As discussed above, I do not find Williams to be a credible witness. The record establishes he went to orientation on November 15, 2019, and he received a copy of his training schedule. Williams was scheduled to work five hours per day from November 18, 2019 through November 22, 2019 for Parco. He did not report to work or call Parco to state he was going to be absent. I find Williams was absent for three days without giving notice to Parco in violation of a company rule published in the employee handbook he received on November 15, 2019, and that he voluntarily quit his employment with Parco without good cause attributable to Parco. Benefits are denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law


The May 29, 2020 (reference 03) unemployment insurance decision denying unemployment insurance benefits is affirmed. Claimant voluntarily quit the claimant’s employment with the employer on November 15, 2019. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times the claimant’s weekly benefit amount after the claimant’s separation date, and provided the claimant is otherwise eligible.

Pandemic Unemployment Assistance (“PUA”) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (“PUA”) that may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation (“FPUC”) program if the individual is eligible for PUA benefits for the week claimed. The FPUC additional \$600 payment per week ends as of July 25th in Iowa. This means the \$600 weekly additional benefit will stop and at this time, no extension or change to the program has been made by Congress at this time. This does mean that you will see a corresponding decrease in your weekly benefit amount. The FPUC payments are not a state benefit and Iowa is unable to make any changes to the availability of this benefit. If a change takes place to this benefit in the future, IWD will share on the IWD website and social media. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below:

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for

reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance ("PUA"). **You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



Heather L. Palmer
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August 12, 2020
Decision Dated and Mailed

hlp/sam