

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA D HAMMOND
Claimant

APPEAL 21A-UI-02521-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OFFICE INSTALLATION SERVICES INC
Employer

**OC: 04/05/20
Claimant: Appellant (1R)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 8, 2020 (reference 02) unemployment insurance decision that denied benefits to the claimant based upon a voluntarily quitting work. The parties were properly notified of the hearing. A telephone hearing was held on March 5, 2021. The claimant participated personally. The employer, Office Installation Services Inc., did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. This hearing was consolidated with Appeal No. 21A-UI-02522-DB-T.

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: A decision dated July 8, 2020 (reference 02) that found the claimant was denied regular unemployment insurance benefits funded by the State of Iowa effective April 5, 2020 because he voluntarily quit work on March 6, 2020 was mailed to the claimant's correct address of record. The claimant received the decision. The claimant filed an appeal online on or about July 12, 2020 but no appeal was docketed. The claimant also spoke to an Iowa Workforce Development representative who told him that he should have been receiving Federal Pandemic Unemployment Assistance (PUA) benefits instead of regular unemployment insurance benefits funded by the State of Iowa and that it would be taken care of.

The claimant began his employment with this employer on August 1, 2017. He worked as a full-time as a general laborer. On March 6, 2020, the claimant voluntarily quit the position to pursue self-employment. Claimant began a position as an independent contractor with another company on March 9, 2020. When the COVID 19 pandemic occurred, the company he had contracted with shut down and had no work available for him.

Claimant's original claim effective date is April 5, 2020. His weekly benefit amount established for State of Iowa benefits was \$435.00. Claimant's received regular unemployment insurance benefits funded by the State of Iowa in the amount of \$5,655.00 for 13 weeks between April 5, 2020 and July 4, 2020. Claimant's administrative records establish that he was approved for Federal PUA benefits

in a decision dated September 21, 2020 with a weekly benefit amount of \$435.00. His PUA benefits began effective March 15, 2020 according to the September 21, 2020 PUA approval decision.

Claimant's administrative records establish that he has not been paid his PUA benefits from March 15, 2020 through August 1, 2020. Claimant's last weekly-continued claim filed was for the week-ending August 1, 2020, as he returned to full-time work after that date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows: The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

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 § 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.

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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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.

In this case, the claimant filed an appeal online but it was never docketed. Further, he spoke to an Iowa Workforce Development representative who told him that he should have been getting PUA benefits and his payments would be taken care of. As such, the delay in an appeal being docketed was due to delay or other action of the United States postal services and his delay in filing any further appeal until December 30, 2020 was due to misinformation from an IWD representative. As such, his appeal shall be considered timely pursuant to Iowa Admin. Code r. 871-24.35(2).

The next issue is whether the claimant's separation from employment was disqualifying. The administrative law judge finds that it was.

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.

Claimant had an intention to quit and carried out that intention by tendering his verbal resignation. As such, 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).

Iowa Admin. Code r. 871-24.25(19) 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:

(19) The claimant left to enter self-employment.

The claimant voluntarily quit because of he left to enter into self-employment. The claimant's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. As such, the separation from employment is disqualifying and unemployment insurance benefits **funded by the State of Iowa** must be denied effective April 5, 2020.

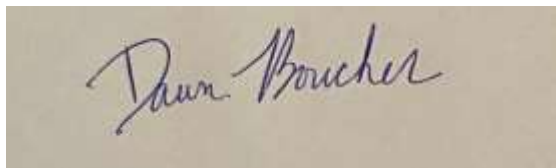
However, the claimant has been found eligible for PUA benefits effective March 15, 2020. He has not been paid his PUA benefits effective March 15, 2020 that he was found eligible for, including any additional FPUC payments that may have corresponded with his eligible PUA weeks. That matter will be remanded to the Benefits Bureau for an initial investigation.

DECISION:

The appeal is considered timely. The July 8, 2020 (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his March 6, 2020 separation date, and provided he is otherwise eligible.

REMAND:

The unemployment insurance decision found claimant was denied regular unemployment insurance benefits funded by the State of Iowa. However, claimant has been approved for Federal Pandemic Unemployment Assistance (PUA) benefits effective March 15, 2020 and there are numerous weeks where he was eligible and filed for PUA benefits that Iowa Workforce Development (IWD) has not yet paid PUA benefits (March 15, 2020 through August 1, 2020). IWD did not offset the PUA benefits claimant is owed from any overpayment of regular unemployment insurance benefits funded by the State of Iowa. The matter of underpayment of PUA benefits and whether the claimant's overpayment of State of Iowa regular unemployment insurance benefits can be offset by his PUA benefits will be remanded to the Benefits Bureau for Iowa Workforce Development for an investigation and determination.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

March 10, 2021
Decision Dated and Mailed

db/ol