

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY S CARVER
Claimant

APPEAL 15A-UI-09766-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACKERMAN INVESTMENT CO
Employer

OC: 07/26/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 21, 2015, (reference 04) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on September 14, 2015. Claimant participated. Employer participated through general manager, Ed Hodson. Department's Exhibit D-1 was received.

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: The decision was mailed to the wrong address on August 14, 2015. Although claimant did eventually receive the decision, she is unsure of the date. Claimant filed her appeal electronically within two days of receiving the decision. Approximately two days later, claimant received notice that her appeal did not go through. Claimant mailed in her appeal the same day. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 24, 2015. The appeal was not filed until August 26, 2015, which is after the date noticed on the unemployment insurance decision.

On May 5, 2015, claimant's daughter sent employer a text message stating that claimant could no longer work due to medical issues. Claimant's daughter sent the text message at claimant's direction. Claimant underwent a medical procedure on May 4, 2015. Claimant's doctor released her to work on approximately May 24, 2015. However, claimant did not return to employer to offer her services as she moved to another locality on May 17, 2015. Claimant did not have another job offer when she quit her employment on May 5, 2015.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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 filed an appeal in a timely manner but it was not received. Immediately upon receipt of information to that effect, a second appeal was filed. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant voluntarily quit with good cause attributable to employer. The administrative law judge concludes she did not.

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.

Iowa Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

Claimant originally quit on the advice of her physician. However, when she was released to work, she did not return to employer to offer her services as she had moved to another locality to obtain other employment.

Iowa Admin. Code r. 871-24.25(2) and (3) 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 § 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 § 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:

- (2) The claimant moved to a different locality.
- (3) The claimant left to seek other employment but did not secure employment.

Moving is not good cause attributable to employer. Although claimant may have qualified for benefits if she had a job offer at the time she resigned her employment, she did not have such an offer until later in May. Thus, there is no provision of the law under which claimant is qualified for benefits.

DECISION:

The August 21, 2015, (reference 04) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/pjs