

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JAMES W BREITKREUTZ
Claimant

APPEAL NO. 09A-UI-09632-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACC ENTERPRISES LLC
Employer

**Original Claim: 05/17/09
Claimant: Respondent (2-R)**

Section 96.5(1) – Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer, ACC Enterprises, filed an appeal from a decision dated June 19, 2009, reference 01. The decision allowed benefits to the claimant, James Breitkreutz. After due notice was issued a hearing was held by telephone conference call on July 21, 2009. The claimant participated on his own behalf. The employer participated by Director of Resident Services Michael Blume and Administrator Dennis Sanvig. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely and whether he quit work with good cause attributable to the employer.

FINDINGS OF FACT:

A disqualification decision was mailed to the employer's last known address of record on June 19, 2009. The employer received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 29, 2009. The appeal was not faxed until July 6, 2009, which is after the date noticed on the decision. The employer had previously faxed the appeal documents on June 26, 2009, which were not received by the Appeals Section. It was re-faxed when the employer inquired of the Appeals Section why a hearing had not yet been scheduled and was told no appeal had been received.

James Breitkreutz was employed by Cedar Health from May 7, 2007 until May 1, 2009 as a full-time maintenance director. On April 6, 2009, he gave a verbal resignation and 30-day notice to Administrator Dennis Sanvig stating he was looking for another job. Mr. Breitkreutz had earlier mentioned his spouse, who carried health insurance for the two of them through her employment, might be in danger of losing her job because the business might be closing.

The claimant quit in order to search for a new job but had not yet found one, though he had applied to a local hospital. His decision to look for other employment was prompted by an incident on March 22, 2009, when a contractor was taking up tile in the kitchen and a lot of dust

was in the air. Mr. Breitreutz believed the tiles might contain asbestos, but did not know for sure. When the kitchen help requested the tile removal be delayed until the food was prepared, it did cease.

At the appeal hearing, the claimant maintained there were many illegal and unethical things he had been required to do by Mr. Sanvig. These ranged from the way in which invoices were "coded" for payment to the installation of replacement electrical outlets. At the time he performed all the duties requested of him without protest. The incident with the tile removal seemed to him to be unacceptable and prompted him to begin searching for a new job.

James Breitreutz has received unemployment benefits since filing a claim with an effective date of May 17, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

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. . . . 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.

The employer has presented satisfactory evidence the appeal was faxed on June 26, 2009, within the ten-day time period required by law. The appeal shall be accepted as timely.

Iowa Code section 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.

871 IAC 24.25(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 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:

(3) The claimant left to seek other employment but did not secure employment.

871 IAC 24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

The claimant's reason for quitting was to look for another job because he no longer wanted to work for Cedar Health. Many of the examples of alleged wrongdoing by the employer that he stated as his reasons for quitting appear to have occurred to the claimant only in hindsight. At the time he was instructed to perform these allegedly illegal and unethical job duties, he did not refuse or protest. He did not report anything to OSHA, Department of Human Service, Department of Inspections and Appeals, building inspectors, insurance agents, or law enforcement. His later conclusions these were illegal or unethical appears to be based on unsubstantiated and out-of-context comments from insurance agents and contractors, and formed the basis for his resignation only after he quit.

The record as a whole establishes the claimant did not have good cause attributable to the employer at the time he made his decision to resign and tendered it to Mr. Sanvig. He is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The decision of the representative dated June 19, 2009, reference 01, is reversed. The appeal in this case shall be accepted as timely. James Breitreutz is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw