

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSEPH K BLAY
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 22A-UI-06765-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/06/22
Claimant: Appellant (1)

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.25(37) - VQ - Resignation

STATEMENT OF THE CASE:

Claimant/appellant, Joseph Blay, filed an appeal from the February 23, 2022, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2022. Claimant personally participated. Employer, Tyson Fresh Meats, Inc., did not participate. Judicial notice was taken of the administrative record. Claimant's Exhibits, C-1 (e-mail) and C-2 (video), and the Department's Exhibit D-1 (fact-finding) were admitted into evidence.

ISSUES:

Is the appeal timely?

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

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: Claimant was employed full-time with a set schedule, as a chaplain from 08/08/2016. His last day worked was 02/03/2022, when he was separated from employment the same date when he turned in his resignation. Claimant thought he was going to be terminated and if true, he wanted to resign instead, thinking that would be less damaging to his job search than a discharge.

Claimant had been sending a daily devotional email to approximately 150 employees to help motivate and bring cheer to the employees at the request of the plant manager. Sometimes claimant would attach a funny clip to the email. On January 27, 2022, claimant emailed a daily devotional with a video clip of two minutes forty-two seconds in length attached. (See C-2).

On January 31, 2022, claimant was called into human resource manager, Emma Campazono's office and was advised that the boss, Lonnie Epsom wanted to talk with claimant. Claimant was advised that the video clip was distasteful and not proper, and Mr. Epsom would be contacting Will

Sager, the director of human resources at Tyson. On February 1, 2022, a colleague approached claimant to advise that he had heard someone was threatening to file a complaint about the video clip unless something was done, as they found it very inappropriate). Claimant reached out to his supervising chaplain and apologize about the problems the video clip was causing. On February 3, 2022, a friend of claimant told him the employer was going to terminate him. Later the same day, claimant got an email that there would be a 1:30pm zoom call appointment with Mr. Sager. While the employer had not told claimant he was being discharged, claimant believed that is what would happen at the 1:30pm appointment. Still on February 3, 2022, claimant emailed his resignation to Ms. Campazono prior to the 1:30pm appointment. Claimant arrived at Ms. Campazono's office for the 1:30pm meeting and she told claimant his resignation was accepted.

The decision denying benefits was mailed to claimant at his address on February 23, 2022. Claimant received the decision on April 25, 2022. On March 18, 2022, claimant called IWD to inquire as to the status of his claim as he had not heard anything. He was informed he had been denied benefits and he could appeal. Claimant submitted his appeal that same day, 03/18/2022.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

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.

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. Board 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. IDJS*, 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. IDJS*, 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not receive the decision within ten days of the mailing date. After he found out about the decision on March 18, 2022, he took zero additional days to file his appeal.

The administrative law judge concludes that his failure to file a timely appeal after receiving notice of the decision was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was timely filed pursuant to Iowa Code § 96.6(2). When claimant called IWD on March 18, 2022 regarding the status of his claim and learned he was denied and could appeal, he did so on the same day. Therefore, the appeal is deemed timely.

The next issue is how was claimant separated from employment. For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was a voluntary quit without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(37) 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:

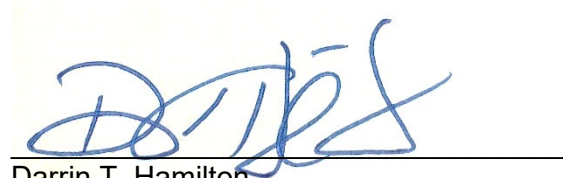
(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant came to believe he was going to be discharged and wanted to resign instead and submitted his resignation in writing, which was accepted by the employer. While employer was going to discharge claimant for misconduct, they had not gotten to that point yet, so there is no Iowa Admin. Code r. 871-24.26(21) involved (compelled to resign when given the choice to resign or be discharged). While claimant's leaving 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 are denied.

DECISION:

The February 23, 2022, (reference 01) unemployment insurance decision is **AFFIRMED**. The appeal is timely, and claimant voluntarily quit his 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.



Darrin T. Hamilton
Administrative Law Judge

May 11, 2022
Decision Dated and Mailed

dh/scn