

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KIM C GRAFF
Claimant

TSI ENTERPRISES INC
Employer

APPEAL 15A-UI-09894-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/02/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 19, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 17, 2015. Claimant participated. Employer participated through Charity Stone, Account Manager and through Sarah Fiedler, Human Resources Generalist. Employer's Exhibit One was entered and received into the record. Department's Exhibits D-1 was entered and received into the record.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last assigned to work at Grain Processing Corporation (GPC) full time beginning on August 21, 2013 through February 16, 2015 when she voluntarily quit working. The claimant last physically worked on September 23, 2014 then went out on medical leave for a non-work related back injury and a subsequent knee replacement. No medical evidence indicates claimant's medical leave was for a work-related incident. She has not filed for any workers' compensation benefits.

On January 14 the claimant took into TSI Enterprises a note from her doctor indicating she would be released to return to work without restrictions on February 16, 2015. She left the note with the receptionist. The employer has not been able to locate the note and have no indication that they ever received it. The employer has a regular practice of scanning and keeping all medical notes in an employee's file so that they have documentation to indicate that an employee is physically able to work. Later in the month of January the claimant was told by GPC employees that she was fired. The claimant never contacted anyone at her employer, TSI Enterprises to talk to them or find out what was going on. Employees of GPC have no right or

authority to discharge the claimant. The claimant admits that no management employee of TSI Enterprises ever told the claimant she was discharged. The claimant simply never went back to work after she was released to do so because she thought she had been fired. If the claimant had presented her release and called the employer, continued work would have been available for her.

The claimant never received the representative's decision denying her benefits. She filed her appeal as soon as she learned of the disqualification.

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 did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer.

The administrative law judge is skeptical that the claimant ever delivered her doctor's note to the employer. If she had then why would she have not called them to inquire about rumors of her discharge? Her own actions do not support her allegation that she delivered the note. Even if the administrative law judge finds the claimant did turn in the doctor's note, it was incumbent upon her to go back to the employer on February 16, 2015 when she was released without restriction so she could be put back to work. She did not do so. At no time prior to February 16, 2015 did any TSI, Enterprises manager ever tell the claimant her job was over. The claimant simply abandoned her job by failing to return to work after she was released to do so. The employer was waiting for her to provide her medical release so they could put her back to work. Since claimant did not follow up with management personnel and her assumption of having been fired was erroneous, claimant's failure to continue reporting to work was an abandonment of her job. Benefits are denied.

DECISION:

The August 19, 2015 (reference 01) decision is affirmed. The claimant voluntarily left 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs