

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TLUANG T HRE**  
Claimant

**OSCEOLA FOOD LLC**  
Employer

**APPEAL 18A-UI-02178-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/10/17**  
**Claimant: Appellant (1)**

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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 January 10, 2018, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on March 14, 2018. Claimant participated. CTS Language Link interpreter ID number 9827 and CTS Language Link interpreter ID number 9401 participated on claimant's behalf. Employer participated through hearing representative Robin Moore and human resources manager Roberto Luna. Official notice was taken of the administrative record with no objection.

**ISSUE:**

Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: An ineligibility decision was mailed to claimant's last known address of record on January 10, 2018. Claimant received the decision, but he does not remember when he received it. Claimant testified he did not think the decision was that serious. Claimant did not read the decision right away. Claimant has been at his address of record for approximately two years. Claimant testified it normally takes approximately two or three days to get mail at his address of record from Des Moines, Iowa. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 20, 2018.

Around January 13, 2018, claimant also received an overpayment unemployment insurance decision dated January 12, 2018 (reference 02). When claimant received the overpayment decision, he showed the overpayment decision to an Iowa Workforce Development (IWD) employee and asked if he had to pay back the benefits he had received. The IWD employee told claimant he did not have to repay the benefits because of his income. In February 2018, claimant went back to the IWD office and was instructed to file an appeal. Claimant filed an appeal from the decision (reference 01) on February 16, 2018, which is after the date noticed on the unemployment insurance decision.

Claimant was employed full-time as a production worker from June 22, 2015, and was separated from employment on July 15, 2017, when he quit. On July 15, 2017, claimant met with Mr. Luna and informed Mr. Luna that he was resigning at the end of his shift on July 15, 2017. Mr. Luna asked claimant why he was resigning. Claimant told Mr. Luna that he was tired and he was planning to go work where his wife worked. Mr. Luna accepted claimant's resignation. Claimant did not say anything to Mr. Luna about not being able to work on Sundays. Claimant did not say anything to Mr. Luna about any challenges with the schedules. The employer informed claimant when he was hired that he may be required to work on Sundays if the production is needed. Prior to July 15, 2017, claimant had worked on Sundays for the employer without any issues. The employer was not aware of claimant having any issues working on Sundays. The employer had work available for claimant had he not resigned. Mr. Luna tried to talk claimant out of resigning because he was a good employee. The employer did not tell claimant he had to quit or he would be fired.

### **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 it is.

Iowa Code section 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, subsections 10 and 11, 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.

Claimant's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD employee when he was instructed he did not need to repay the benefits the decision (reference 02) said he had been overpaid. Based on this information,

claimant did not immediately file an appeal. In February 2018, claimant found out about the misinformation when he returned to the IWD office and was instructed to file an appeal. Claimant then filed an appeal. This delay was prompted by an IWD employee. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant voluntarily quit the employment with good cause attributable to employer. The administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(18), (27), and (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:

**(18)** The claimant left because of a dislike of the shift worked.

**(27)** The claimant left rather than perform the assigned work as instructed.

**(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's decision to quit because he did not want to work on Sundays when he had previously signed up to work on Sundays and was aware when he was hired that he may have to work on Sundays, was not for a good cause reason attributable to the employer. Claimant's decision to quit because he wanted to work where his wife worked is also not a good cause reason attributable to the employer. While claimant's leaving the employment 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 must be denied.

**DECISION:**

The January 10, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant's appeal is considered timely. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. It is noted that in the unemployment insurance decision dated January 29, 2018 (reference 03), claimant has "earned ten (10) times [his] weekly unemployment benefit amount in insured work after the disqualifying separation from this employer."

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs