

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**STEVEN R TURNER**

Claimant

**APPEAL 23A-UI-05897-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUSHMAN EXCAVATING INC**

Employer

**OC: 08/28/22**

**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quit from Employment

Iowa Admin. Code r. 871-24.25(20) – Quit for Compelling Personal Reasons

Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On June 8, 2023, claimant Steven R. Turner filed an appeal from the May 17, 2023 (reference 11) unemployment insurance decision that denied benefits based on a determination that he voluntarily quit his employment on April 29, 2023 for personal reasons. The parties were properly notified of the hearing. The parties waived the required notice on the issue of whether the appeal was timely filed. A telephonic hearing was held at 10:00 a.m. on Wednesday, June 28, 2023. Claimant Steven R. Turner participated. Employer Bushman Excavating Inc. participated through owner Dan Bushman. No exhibits were admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Did the claimant file a timely appeal? Is there good cause to treat the appeal as timely filed?

Did the claimant quit the employment without good cause attributable to the employer or was he discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on April 4, 2023. Most recently, he worked full-time hours as a driver/laborer. Claimant's employment ended on April 29, 2023, when he quit. Continued work was available, had claimant not quit his position.

Claimant last performed work for the employer during the second-to-last weekend in April 2023. Bushman offered claimant the opportunity to earn extra income by running a trailer load to Omaha on Saturday, dropping the trailer at the yard, picking up an empty trailer, and driving that trailer back to the employer's location in the Cedar Rapids area. After Bushman helped him get set up for the trip, claimant departed from the employer's location around 12:30 p.m. Claimant had mechanical issues with the truck on his way to Omaha on Saturday, August 23. While he was calling Bushman to report these issues, his cell phone died. He put his dead cell phone on

a charger in his truck and did not call the employer back. Bushman did not know where claimant was or what exactly was happening with the vehicle he was driving. Bushman then spent the next several hours attempting to locate the truck, reach claimant, and understand what was happening while simultaneously attend a social engagement with family. Finally, once Bushman learned where claimant and the truck were located, he dispatched another employee (Dylan) to go to that location and find claimant. Once Dylan arrives, he informs Bushman that claimant had his cell phone on a charger the entire time. When Bushman finally spoke to claimant, he was furious and gave claimant an “ass-chewing.” (Bushman testimony.)

The following day, claimant spoke with Bushman. After Bushman apologized to claimant for his behavior the day prior, claimant accepted the apology and indicated he understood he should have called Bushman back right away. Claimant then offered to complete the run to Omaha, as he still wanted to make the additional income. He took the truck and successfully dropped the trailer in Omaha, retrieving the empty trailer as well. However, the truck never made it back to the employer’s location. Claimant experienced a serious mental health issue while on his way back from Omaha to Cedar Rapids, and he needed to stop in Marshalltown to seek assistance. Claimant had pre-existing mental health issues, and he was also dealing with stressful circumstances with his roommates.

After spending several days receiving intensive mental healthcare services, claimant met with Bushman on Saturday April 29. Claimant told Bushman additional information about his mental health symptoms, the treatment he sought in the week prior, and his plan for moving to a better housing situation. He then shook Bushman’s hand, thanked him for the opportunity to work for him, and quit his position. Bushman had continued work available for claimant, had claimant not quit on April 29.

The work environment was informal and rife with profanity. Bushman and his employees used profanity as part of their daily vocabulary and they used it toward one another. Claimant was aware this was standard for this industry. Claimant received both positive and negative performance feedback during his employment. There were occasions when Bushman became upset with claimant, particularly when claimant failed to communicate critical information. However, Bushman also extended opportunities to claimant based on his performance and personally trained him on a Saturday so he could make additional income.

The decision denying benefits was sent to claimant’s most recent address of record on May 17, 2023. Claimant did not receive this decision. He has routine difficulties receiving mail that is sent from state agencies based out of Des Moines. For some reason, this mail gets forwarded to a PO Box that claimant no longer has, which results in claimant not receiving the mail for weeks if at all. Claimant stopped into the local office on June 8 and learned that the separation decision had been issued and he was denied benefits. He filed an appeal online that day.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit the employment without good cause. Benefits are withheld.

The initial matter to determine is whether the appeal is timely. The administrative law judge determines it is.

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 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).

Here, the claimant did not have an opportunity to appeal the fact-finder's decision because the decision did not arrive in the mail. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal the same day that he went to the IowaWorks office and discovered the decision had been issued and that he was denied benefits. Therefore, the appeal shall be accepted as timely.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Where a claimant gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.25(20) and (28) provide:

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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(28) The claimant left after being reprimanded.

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's testimony to be more credible than the claimant's testimony. Specifically, claimant gave both vague and contradictory details when testifying about the events over the April 22-April 23 weekend. Bushman, in contrast, offered a detailed, exhaustive account of what occurred on April 22 and April 23. Claimant, notably, did not dispute 99% of Bushman's account. This led me to conclude that Bushman was the more believable witness regarding the circumstances and end of employment.

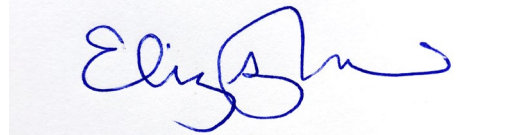
Bushman acknowledges he became furious with claimant the night of April 22. Claimant had left the employer's premises at 12:30 p.m., called him at 6:30 p.m. after traveling only ninety-some miles, had his phone die during the conversation, and then put his phone on the charger and made no attempt to either reach the employer or turn his phone on. This mind-boggling sequence of events caused Bushman to spend his Saturday night at the rodeo trying to track his employee through GPS devices, his employees, truck stop employees, and employees of companies in other states. It is difficult to imagine an individual who would not be furious after that fiasco.

The evidence in the record shows that claimant experienced some sort of serious mental health event on his way back from Omaha on April 23. While the stress of wanting to perform his work well and the recent intense reprimand he received from Bushman may have heightened claimant's anxiety, the administrative law judge does not believe either of these factors played so significant a role that the employer should be held responsible for claimant's decision to quit the employment. Claimant ended his employment relationship with the employer in order to seek further mental healthcare services and to straighten out his living situation. These are certainly compelling personal reasons to leave employment, but they are not fairly attributable to the employer. The administrative law judge finds the claimant quit without good cause attributable to the employer. Benefits are withheld.

Because benefits are withheld, the issue of whether claimant is able to and available for work is moot at this time.

**DECISION:**

The May 17, 2023 (reference 11) unemployment insurance decision is affirmed. Claimant separated from 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.



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Elizabeth A. Johnson  
Administrative Law Judge

June 30, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.