

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY M HOCKER
Claimant

APPEAL NO. 12A-UI-06733-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAGCRAFTPAPERCON II LLC
Employer

OC: 12/11/11
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 3, 2012, reference 06, that concluded he voluntarily quit employment without good cause. A telephone hearing was held on July 2, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Tina Stewart participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant file a timely appeal?

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

FINDINGS OF FACT:

The claimant worked full time for the employer as an operator from January 10 2011, to March 2, 2011. He called in sick on March 3 and 4. After March 4, the claimant had no further contact with the employer. He voluntarily left employment with the employer to accept work with Miles Wellman Construction.

An unemployment insurance decision was issued on March 21, 2012, that the claimant was working as an independent contractor, not as an employee for Miles Wellman Construction. He initially appealed this decision, but he later withdrew his appeal, as confirmed by a decision of an administrative law judge in appeal 12A-UI-03358-BT issued on April 18, 2012.

An unemployment insurance decision was mailed to the claimant's last-known address of record on April 3, 2012. The decision concluded he had voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by April 13, 2012.

The claimant received the decision within the ten-day period for appealing the decision. He did not appeal the decision because he was told by a workforce advisor that would be disqualified from receiving benefits from the employer but would receive benefits from his other employers.

He filed a written appeal on June 8, 2012, after receiving a decision that he was overpaid benefits.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal. The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

The failure to file a timely appeal in this case was due to Agency misinformation, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The fact of the matter is that under the facts of this case, the claimant's eligibility for benefits is determined by his separation from Bagcraftpapercon, since it is the last employer the claimant worked for in an employer-employee relationship. The appeal is deemed timely.

The next issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

The law provides that a claimant who quits employment to accept another job is not subject to disqualification under the voluntarily quit disqualification. Iowa Code § 96.5-1-a. The rules, however, state that a claimant who quits employment to enter self-employment has quit without good cause. 871 IAC 24.25(19) and 24.28(5).

An unemployment insurance decision was issued on March 21, 2012, that the claimant was working as an independent contractor, not as an employee for Miles Wellman Construction. That decision became final when the claimant withdrew his appeal from that decision. I have no authority to set aside a decision of another administrative law judge. It is binding in this case. Since the claimant voluntarily quit employment without good cause attributable to the employer, he is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Insured work does not include work as an independent contractor so the claimant remains disqualified from receiving benefits.

DECISION:

The unemployment insurance decision dated April 3, 2012, reference 06, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has worked in and been paid wages from insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css