

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MISSY M PORRAS
Claimant

BEAR BASICS CHILDREN CENTER INC
Employer

APPEAL 16A-UI-09859-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/31/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 18, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 27, 2016. Claimant participated. Employer participated through Elizabeth Bolin, Director. Employer's exhibit one was entered and received into the record. Department's exhibit 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 employed full-time as a teacher/child care provider beginning February 16, 2015 through March 23, 2016 when she voluntarily quit her employment. This was the claimant's second stint of employment with this employer.

The claimant was pregnant in March 2016 and was suffering high blood pressure. The claimant's health concerns were what led her to submit her two-week notice of intent to resign. The claimant's blood pressure remained high throughout her pregnancy, some five months after she voluntarily quit her employment. The claimant's high blood pressure was not caused by her employment, but by her pregnancy. On March 17 the claimant turned in her two-week notice indicating that her last day of work would be on March 31, 2016.

On March 23 the claimant and Ms. Bolin got into an argument in the workplace that was loud and disruptive. Because the claimant was being loud and disruptive, Ms. Bolin sent her home from work early that day. Neither Ms. Bolin nor anyone else told the claimant she was being discharged on March 23. The claimant stopped reporting for work, thinking that she had been

discharged. While the claimant did call the employer after March 23, it was to obtain her paycheck. The employer did not get a call from the claimant asking if she was discharged or whether she could return to work. The employer believed the claimant decided not to return to work as she had already put in her notice of her intent to quit. The claimant did not file her claim for unemployment insurance benefits until the week of July 31, 2016.

The claimant had her baby on August 16 and suffered complications that kept her hospitalized for at least six days. The claimant did not receive the decision denying benefits until after her time to appeal had expired. The claimant filed her appeal as soon as she learned of the decision denying her benefits.

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 in a timely fashion. The claimant was in the hospital when the decision was issued. Without timely 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). The claimant filed the appeal within days of receipt. 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 claimant had already put in her notice of intent to quit for reasons not related to her employment. Since her blood pressure remained high for at least five months after leaving the work environment, the administrative law judge concludes the work did not cause her high blood pressure, her pregnancy did. The claimant only followed up with the employer to obtain her last paycheck. As her assumption of having been fired was erroneous; claimant's failure to continue reporting for work was an abandonment of her job. Benefits are denied.

DECISION:

The August 18, 2016, (reference 01) decision is affirmed. The claimant's appeal was timely. 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