

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

PAUL DAVIS
Claimant

APPEAL 22A-UI-07517-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CALDWELL RECYCLERS INC
Employer

**OC: 04/04/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal on March 28, 2022 from the September 2, 2021, reference 03 unemployment insurance decision that denied benefits based on claimant having voluntary quit employment. The parties were properly notified of the hearing. A telephone hearing was held on May 10, 2022. The claimant, Paul Davis participated personally. The employer, Caldwell Recyclers Inc. participated through employee Christina Caldwell.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Was the claimant discharged for disqualifying job-related misconduct?

Was the claimant's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a Class A CDL Driver driving semi-tractors pulling dump trailers full of scrap metal. Claimant began work with the employer on April 12, 2021, and quit on May 20, 2021. On that day claimant turned in his keys and fuel card after an altercation with another employee. Claimant complained of being loaded overweight, loaded to an illegal height and of multiple mechanical issues with the trailer however at no time did he apparently refuse to drive those load. In fact, claimant was required to inspect his vehicle prior to departure for each and every trip. The employer had procedures in place that would have allowed claimant to weigh his load prior to leaving if he was concerned about the load weight, or to have a mechanic potential sign his trailer out of commission through the use of a pre-trip inspection form. Claimant received no DOT citations during the time of his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant has filed a timely appeal as required by the Iowa Employment Security Law.

Iowa Code § 96.6(2) provides in pertinent part:

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979).

In this case, the claimant did not receive the notice of claim until such time as he received an overpayment decision. At that time he appealed in a timely fashion. The claimant did not have an opportunity to protest the notice of claim because, for some unknown reason, the notice was not received in a timely fashion. Without timely notice of a claim, no meaningful opportunity to respond exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal upon receipt of the notice of the overpayment in March 2022. Therefore, the appeal shall be accepted as timely.

As a preliminary matter, the administrative law judge finds that the claimant was not terminated for misconduct. Claimant voluntarily quit. The question at hand is whether the claimant's quitting was for good cause attributable to the employer.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit but not for good cause attributable to the employer. Benefits are allowed.

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.

The 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).

It is the duty of the administrative law judge 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.* When deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; 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.*

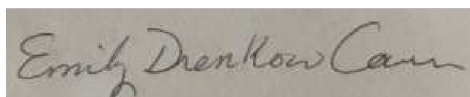
The claimant and employer essentially have the same story about the actual day of quitting. Claimant was in an altercation with another employee. Claimant told the employer he quit and claims that it was because of several safety and operational concerns including receiving multiple overweight tickets, being loaded to an illegal height, and complaining about trailers that had frequent oil leaks, hydraulic leaks and assorted other mechanical issues.

The employer states that claimant quit following the altercation with the coworker and that when he quit he indicated it was because he wasn't going to put up with the bullshit from another employee.

The administrative law judge finds the employer's testimony more credible. The claimant quit following an altercation with another employee and stated that he was not going to put up with bullshit from other employees. The claimant may have had operational and safety concerns but failed to avail himself of the available remedies (using the scale or getting a mechanic to lock out the vehicle or trailer). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer, and has failed to carry his burden here. The claimant quit without good cause attributable to the employer.

DECISION:

The September 2, 2021, reference 03 unemployment insurance decision affirmed. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 23, 2022
Decision Dated and Mailed

ed/scn

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: 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**

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 adquiera 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.