

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-00524-H  
OC: 11-28-04 R: 02  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Timeliness  
Section 96.5-1 – Quit

STATEMENT OF THE CASE:

Charles Hearshman filed an appeal from a decision dated December 20, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held in Mason City, Iowa on March 14, 2005. The claimant participated on his own behalf and was represented by Attorney Jackie Armstrong. Winnebago Industries was paged to the main waiting area at 10:29 a.m. and at 11:17 a.m. No one was present and the employer did not participate. Exhibits D1, and A through H were admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Charles Hearshman was employed by Winnebago from April 1998 until October 13, 2004. He was a full-time employee. During his employment, Mr. Hearshman had received a copy of the employee handbook. He was aware of the policy which stated any employee who is a no-call/no-show to work for three days will be considered a voluntary quit.

Mr. Hearshman was a no-call/no-show to work on October 11, 12, and 13, 2004. He was suffering from a severe depression and had not left his home or his bedroom for those three days. His brother found him at home on October 14, and had him admitted to the Mercy Medical Center of the Psychiatric Unit. The brother also called Winnebago Industries on October 14 to report that Mr. Hearshman would not be at work until further notice because he had no idea when the claimant would be able to return to work. He talked to Larry Klegholm, and was told that Mr. Hearshman was already considered to be a voluntary quit because he had been a no-call/no-show for the three days prior to that.

Mr. Hearshman was involuntarily committed for psychiatric care and was finally released from the Cherokee, Iowa facility on November 23, 2004. The note provided by his doctor indicated he could return to work without restrictions on December 1, 2004. Mr. Hearshman contacted Mr. Klegholm at Winnebago and was told that it was "out of his hands" and the claimant's employment had been ended due to the three days' no-call/no-show to work.

Mr. Hearshman filed a claim for unemployment benefits with an effective date of November 28, 2004. He was mailed a decision which disqualified him on December 20, 2004 at his address of record. He had been told by the fact-finding interviewer that he would be receiving the decision within one to two weeks. The claimant did not receive the decision but waited until January 14, 2005 to attempt to find out what the final result of the interview had been. He contacted an employee in the administrative offices in Des Moines, Iowa on January 14, 2005 and was told he had been disqualified. He was advised to file an appeal and faxed in an appeal on January 17, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeal is timely. The judge concludes it is.

Iowa Code Section 96.6-2 provides in pertinent part:

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. . . . 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.

The claimant was sent a copy of the decision to his address of record. The postal service never delivered the decision to that address. The administrative law judge finds it curious the claimant waited over four weeks before attempting to make any inquiry as to the result of that decision,

he nonetheless filed his appeal within three days of finding out the results. The appeal should, therefore, be accepted as timely.

The next issue is whether the claimant is disqualified. The judge concludes he is not.

Iowa Code Section 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.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant is considered to be a voluntary quit by operation of law. The above administrative code section says the three days of no-call/no-show to work is considered a voluntary quit, and the employer's policies state the same thing. However, sufficient evidence has been produced that the claimant was incapable, due to his mental disorder, of understanding the need to notify the employer of his absence or, in fact, to take any positive action on his own behalf. His brother made the attempt to notify the employer of Mr. Hearshman's absence on October 14 but by then it was already too late. The administrative law judge cannot conclude the claimant had any willful intent to fail to notify the employer of his absence due to his mental illness. He did attempt to obtain his job back after he was released from the hospital but the employer would not consider the documentation from the physician as good cause to reinstate his job. The record establishes the claimant did not voluntarily quit as he was incapable of understanding the nature and quality of his failure to call in and disqualification should not be imposed.

#### DECISION:

The representative's decision of December 20, 2004, reference 01, is reversed. Charles Hearshman is qualified for benefits, provided he is otherwise eligible.

pjs/kjf