

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESUS J PEREZ
Claimant

APPEAL NO. 09A-UI-17022-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRUCE R PETTY INC
Employer

OC: 02/01/09
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 1, 2009, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on December 16, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Dennis Emanuel, and a witness, Marlen Perez. Ike Rocha was the interpreter for the hearing. Bruce Petty participated in the hearing on behalf of the employer. Exhibits A-1 and A were admitted into evidence at the hearing.

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 a metal cutter from April 2007 to December 19, 2008. Bruce Petty is the owner of the business.

Around December 20, 2008, the claimant received information that his wife's sister was seriously ill in Mexico. The claimant and his wife traveled immediately to Mexico. He did not personally notify the employer about his leaving to travel to Mexico.

Although the claimant had asked his daughter to call the employer regarding his absence, his daughter never spoke to Petty or another supervisor about his absence. She did attempt to call a couple of times on December 22, 2008, but did not get through to Petty. Petty was unaware of the calls.

After the claimant had missed several days of work, Petty heard from the claimant's nephew who also worked for the employer that the claimant was in Mexico. Petty believed the claimant had quit his employment and replaced him.

The claimant returned to Iowa in January and contacted the employer at the end of January. The claimant was informed that he had been replaced and the employer did not have work for him.

An unemployment insurance decision was mailed to the claimant's last-known address of record on September 1, 2009. The decision concluded the claimant voluntarily quit employment without good cause attributable to the employer and notified the claimant that the decision was final unless appealed by September 11, 2009.

The claimant may have received the decision, but due to language problems did not understand that he was disqualified until he received an overpayment decision dated November 3, 2009, which he appealed on November 9, 2009.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

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 Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). I concluded the claimant did not have a reasonable opportunity to file a timely appeal because he did know that he had been disqualified until he received the overpayment decision dated November 3, 2009, which he appealed timely. His appeal is deemed timely.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe Petty's testimony that he received no notice from the claimant or his daughter about his whereabouts. I do not believe the one minute entries on the daughter's cell phone prove she talked to Petty. I do not believe the conversation the

daughter described could be completed in one minute. The claimant left work without notice or permission from the employer.

Under the unemployment insurance law, a claimant is not disqualified if he left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill. Iowa Code section 96.5-1-c. A sister-in-law, however, would not meet the definition of an immediate family member under the unemployment insurance rule 871 IAC 24.26(8).

The unemployment insurance law also provides that a claimant is not disqualified if he leaves work for not to exceed ten working days for compelling personal reasons, provided that the claimant (1) informed his employer before leaving of the compelling personal reasons and (2) and immediately returned to work but no work was available. Iowa Code section 96.5-1-f. This statute would not apply because the claimant was gone for more than ten days and he did not notify his employer before leaving of the compelling personal reasons.

DECISION:

The unemployment insurance decision dated September 1, 2009, reference 01, is affirmed. The claimant 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs