IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ELI GODFROY Claimant **GIT-N-GO CONVENIENCE STORES INC** Employer	**APPEAL 16A-UI-04897-SC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/06/16** **Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Eli Godfroy (claimant) filed an appeal from the April 1, 2016 (reference 02) unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment by refusing to continue working which is not a good cause reason attributable to Git-N-Go Convenience Stores, Inc. (employer). The parties were properly notified about the hearing. A telephone hearing was held on May 11, 2016. The claimant participated personally and through non-attorney representative Brandy Allen. The employer participated through Supervisor Jeff English. Department Exhibits D-1 and D-2 were received.

ISSUES:

Is the appeal timely?

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a Clerk beginning on August 11, 2015 and was separated from employment on November 15, 2015, when he quit. The claimant told the employer when he was hired that he had Bipolar Disorder. He requested to work only two or three days a week and to always be scheduled with another co-worker. The employer explained he would likely have to work at least one shift by himself and the claimant agreed. The claimant was regularly scheduled five to six days a week throughout his employment. There were days when he was incapable of working due to his impairment and the employer granted him time off. If the claimant has an episode, he becomes shaky, short of breath, and has difficulty controlling what he says.

On November 15, 2016, the employer installed new registers. The claimant reported for his shift at his start time. The Assistant Manager was working. She told him there were new registers and then left without providing any training. The claimant had difficulty with the new registers. He took 25 minutes to correct an error and a line of other customers formed in

that time. The claimant became overwhelmed by the situation and he began to have an episode. He claimant tried to reach his Store Manager Kathy, Supervisor Jeff English, and the corporate office to report his issues. However, no one was available to answer his phone call. An employee from another store stopped in to buy a snack before continuing on to work and the claimant asked him to work his store. The claimant then left saying he was done.

The claimant filed for unemployment insurance benefits the week of March 6, 2016. Three decisions were made about his eligibility for benefits based on three different employers during a two week time-period. The decision for this employer was made on April 1, 2016 (reference 02). (Department Exhibit D-2.) However, the claimant did not receive that decision in the mail. Instead, he received a second copy of the March 14, 2016 (reference 01) decision regarding another employer that allowed him benefits. On April 27, 2016, the claimant contacted his local workforce development office to ask why he was not receiving his weekly benefits. He was notified at that time about the April 1, 2016 (reference 02) decision that disqualified him from benefits. The following day, the claimant filed this appeal. (Department Exhibit D-1.)

REASONING AND CONCLUSIONS OF LAW:

Is the appeal timely?

The first issue to be considered in this appeal is whether the appellant'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 appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed.

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.

Iowa Admin. Code r. 871-24.26(4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
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> (4) The claimant left due to intolerable or detrimental working conditions.

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

The claimant put the employer on notice of his mental impairment. One of his requested accommodations was not to work alone, although he did the best he could when needed. The employer accommodated the claimant by allowing him to leave work when necessary or not report to work when having an episode. On the day he quit, the claimant was left with a new register, no training, and no co-workers. He attempted to reach out for assistance on numerous occasions but nobody answered his phone calls. This created an intolerable and detrimental working environment. The claimant left his employment with good cause attributable to the employer. Accordingly, benefits are allowed.

DECISION:

The claimant's appeal was timely filed. The April 1, 2016 (reference 02) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Stephanie R. Callahan
Administrative Law Judge

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Decision Dated and Mailed

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