

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TODD D VENENGA**  
Claimant

**HARTLEY-MELVIN-SANBORN  
COMMUNITY SCHOOL DISTRICT**  
Employer

**APPEAL 17A-UI-12290-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/05/17  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 16, 2017, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on December 20, 2017. Claimant participated. Employer participated through high school principal Nathan Hemiller and business manager April Hengeveld. Named witness Kevin Soden did not participate. Department's Exhibit D-1 was received. Employer's Exhibit 1 was received.

**ISSUES:**

Is the appeal timely?

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on November 16, 2017. Claimant last checked his mail at the post office box on the Tuesday before Thanksgiving, November 21, 2017, and there was no IWD mail. He left town on November 24 and returned November 28. He received the decisions at the post office box on November 29, 2017. The appeal was sent on November 30, 2017.

Claimant was employed as a full-time night custodian/shuttle bus driver trainee through November 3, 2017. Hemiller, superintendent Bill Thompson and transportation director Kevin Soden met with claimant on Tuesday, October 24 after he missed work on October 23. His absenteeism rate was 20 percent after two months' employment so Hemiller wanted to discuss attendance expectations and solutions but there was no intention to discharge him. Claimant

has chronic migraine headaches so said he could not be reliable and would not likely be at work more often than he had been. He assumed that the employer wanted him to resign but did not ask about his employment status. Hemiller told him if he chose to resign that would be his call but did not ask him to resign and made no threat of discipline, discharge, ultimatum, or deadline. Claimant said during the meeting that he was choosing to resign so Hemiller asked him to work through November 3 so the employer could seek a replacement. Claimant agreed and submitted his written resignation later that day. Health insurance benefits were not discussed in that meeting but do not necessarily end on the date of separation. Continued work would have been available had he not quit.

## **REASONING AND CONCLUSIONS OF LAW:**

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 section 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 unemployment insurance decision because the decision was not received in a timely fashion while claimant was out of town. Without timely 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 appellant filed the appeal within one day of receipt. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code section 96.5(2)a provides:

**Causes for disqualification.**

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 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.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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). 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. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Since Hemiller did not tell claimant he would be discharged if he missed another day of work, did not instruct him to resign and did not fire him, claimant did not follow up with administrators about the status of his employment, and his assumption of having been fired or asked to resign was erroneous, the resignation due to anticipated attendance issues due to a chronic health condition was without good cause attributable to the employer.

**DECISION:**

The November 16, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant's appeal is timely. He voluntarily left the employment without good cause attributable to employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs

**NOTE TO EMPLOYER:**

If you wish to change the mailing address of record, please access your account at:

<https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

[http://www.youtube.com/watch?v=\\_mpCM8FGQoY](http://www.youtube.com/watch?v=_mpCM8FGQoY)