

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB SHELTON

Claimant

APPEAL NO: 12A-UI-12036-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BONNESEN INSTALLATION

Employer

OC: 08/07/11

Claimant: Appellant (2)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.1(113)a - Separation Due to Layoff
Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Jacob Shelton (claimant) appealed an unemployment insurance decision dated April 30, 2012, reference 03, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Bonnesen Installation (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 31, 2012. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted. The claimant provided the employer's telephone number and the number was called but there was no answer, so the employer did not participate. Exhibit D-1 was admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's appeal is timely and, if so, whether his separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last known address of record on April 30, 2012. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 10, 2012. The appeal was not filed until October 5, 2012, which is after the date noticed on the disqualification decision.

The claimant never actually separated from the employer in April 2012, so he did not think about the decision or unemployment benefits until he was placed on a temporary layoff during the first week of September 2012. He was off work for two weeks, returned for two weeks, and was laid off again.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be determined is whether the claimant's appeal is timely.

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 did not receive the decision within the ten-day time period allowed for the appeal. He filed a claim for benefits when he became unemployed and received a decision determining there was a previous adjudication. The claimant promptly filed an appeal to that decision, which was his first notice of disqualification, and therefore the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. All terminations of employment are generally classified as layoffs, quits, discharges or other separations. 871 IAC 24.1(113)(a). A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer or an employer has discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant and the employer had a disagreement in April 2012 and the claimant was off work for three days before he returned to work. Consequently, there was no separation on April 4, 2012.

The evidence establishes the claimant was laid off during the first week of September 2012. When an employer initiates a separation, the reasons for the separation must constitute work-connected misconduct before a claimant can be denied unemployment insurance benefits. A layoff does not constitute work-connected misconduct. The claimant's separation from employment was not due to any misconduct on his part nor did he quit his job. The claimant is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated April 30, 2012, reference 03, is reversed. The claimant qualifies for benefits, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw