

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXANDER T SEAKOR
Claimant

APPEAL NO. 12A-UI-13181-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 12/05/10
Claimant: Appellant (1)

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 April 12, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on December 6, 2012. Claimant participated. Employer participated through human resources assistant manager Javier Sanchez. Department's Exhibit D-1 was received.

ISSUES:

Is the claimant's appeal timely?

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge 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: A disqualification decision was mailed to claimant's last-known address of record on April 12, 2011. He received the decision within the appeal period but was advised by a local office representative not to appeal because he would not be eligible for benefits because of his medical restrictions related to a work injury. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 22, 2011. The appeal was not filed until October 30, 2012 when he filed his appeal of the October 8, 2012 (reference 02), overpayment decision. That appeal deadline was October 18, 2012. He filed the appeal of the overpayment decision late because he had moved and had filed a mail forwarding order with the post office but did not change his address with IWD until he reported in person to file his appeal on October 30, 2012, and postmarked it on November 2, 2012, which is after the date noticed on the disqualification decision.

Claimant injured his hand at work in April 2010 and had surgeries in May and September 2010, and February, June, and October 2011. He was medically restricted from working from late

December 2010 through mid-2012. He was suspended without pay on December 9, 2010 because of an allegation of grabbing another person at work. He did not claim benefits during the suspension period. An internal investigation and grievance procedure revealed he was not the aggressor and acted only to defend himself and approximately two weeks later was told he would be reinstated. He did not return to work as directed even after Human resources Manager Jenny Moira called him multiple times until December 23, 2010. He was upset he would not receive back pay for the suspension period. He was aware he would require further surgery in late December 2010 and maintained communication with the workers' compensation insurance carrier representative but not with Swift human resources.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is timely.

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 record shows that the appellant did not have a reasonable opportunity to file a timely appeal. While the claimant was given accurate information about his non-eligibility for benefits, the advice by the IWD representative not to file an appeal was incorrect. Given that claimant's appeal of the separation issue is tied to the receipt of the overpayment decision, the timeliness must be based upon those facts. Claimant's failure to provide an address change to IWD when he moved in October 2012 was not unreasonable since the most recent action on his file was a year and a half earlier in April 2011 and he would not have reasonably expected a related

overpayment decision to take 18 months to calculate and process. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2).

The next issue is whether the claimant voluntarily left the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits. 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 § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 § 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.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). 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. Since claimant did not communicate with the Swift human resources department or respond to Moira's calls, the failure to continue reporting to work was an abandonment of the job. Even if he had medical restrictions, he should have reported and dealt with that issue apart from the suspension and back pay concerns. Even had the separation been qualifying, his medical restrictions prevented him from working during the period in which he claimed benefits between December 26, 2010 and January 29, 2011. See, Iowa Code § 96.4(3), which requires an individual claiming benefits to be able to work. Benefits are denied.

DECISION:

The April 12, 2011 (reference 01) decision is affirmed. Claimant's appeal is timely but 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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