

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RON E PATTERSON
Claimant

SACHS ELECTRIC CO
Employer

APPEAL 20R-UI-07257-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

The claimant/appellant, Ron E. Patterson, filed an appeal from the April 30, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A first hearing was scheduled but not conducted on June 1, 2020 when the claimant/appellant failed to appear at the time of hearing. The claimant successfully requested reopening and the matter was remanded for a new hearing.

After proper notice, a telephone hearing was conducted on August 11, 2020. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Department Exhibit D-1 was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Did claimant voluntarily quit the employment with good cause attributable to 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 journeyman-electrician and was separated from employment on January 4, 2020, when he quit the employment. Continuing work was available.

The claimant quit to move home and take care of his son, who was experiencing a serious medical issue. Upon stabilizing his son, he did not attempt to return to this employer. After separating with this employer, he has worked for Romanoff Electric in Toledo, Ohio, Superior Electric in Troy, Michigan, Edgar Electric in Burton, Michigan and Hill Engineering in Troy,

Michigan. The issue of whether the claimant has requalified for benefits since his January 4, 2020 separation has not yet been addressed by the Benefits Bureau.

An initial unemployment insurance decision (Reference 01) resulting in a denial was mailed to the claimant's last known address of record on April 30, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 10, 2020. Because May 10th was a Sunday, the final day to appeal was extended to May 11, 2020.

The claimant did not file his appeal until May 14, 2020 (Department Exhibit 1). When he filed his claim for benefits in March, he listed his prior address in Omaha, which corresponded with his time working for Sach's Electric Company until January 1, 2020. He called IWD each week to check on his claim and was unaware the incorrect address had been inadvertently listed until May 14, 2020. He then filed his appeal.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v.*

Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. 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 claimant was in contact with IWD weekly and unaware of the initial decision being sent to an old address until May 14, 2020. He filed his appeal on the same day. Therefore, the appeal shall be accepted as timely.

The next issue to address is whether the claimant quit for good cause attributable to the employer.

Iowa Code section 96.5(1)c 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. But the individual shall not be disqualified if the department finds that:

c. The individual 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, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d

676, 680 (Iowa 1986) “[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination.” *Id.*

In this case, the claimant left employment for taking care of his son, who was experiencing a medical issue. However, upon his son stabilizing, he did not attempt to return to this employer. Therefore, he would not meet the requirements as outlined above, to be eligible for benefits. While the claimant may have had good personal reasons to quit the employment, he has not established good cause attributable to the employer, according to Iowa law. Benefits are withheld.

The issue of whether the claimant has requalified for benefits since separation is remanded to the Benefits Bureau for an initial investigation and decision.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he/she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below.

DECISION:

The unemployment insurance decision dated April 30, 2020, (reference 01) is affirmed. The appeal is timely. The claimant voluntarily quit without good cause attributable to the 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.

REMAND: The issue of whether the claimant has requalified for benefits since separation is remanded to the Benefits Bureau for an initial investigation and decision.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:
www.iowaworkforcedevelopment.gov/pua-information



Jennifer L. Beckman
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August 17, 2020
Decision Dated and Mailed

jlb/scn