

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANE R HAWKER
Claimant

STEPHEN M SIMONS
Employer

APPEAL 14A-UI-13446-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/13
Claimant: Appellant (2)

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 24, 2014, (reference 01) unemployment insurance decision that denied benefits based upon his separation. The parties were properly notified about the hearing. A telephone hearing was held on January 23, 2015. The claimant participated with witness Michelle Cook. The employer participated through Steve Simons.

ISSUE:

Is the appeal timely?
Did the claimant voluntarily quit 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 roofer and was separated from employment on November 3, 2014, when he resigned without notice.

The claimant credibly testified that he was unsafe working as a roofer with his peers who would tell him that they were taking breaks to go smoke marijuana behind chimneys. He was also told to go faster at the work he was doing and not all of the safety was used because his co-workers refused to use it. The claimant told his employer who said the safety equipment was in the vehicles and when he observed the work site, he saw no drug use and elected not to pay \$200 a person to drug test them.

In the middle of the claimant's final shift, his foreman came back from a break and began yelling and using profanities towards the claimant and his co-worker for "messing up the lines." The claimant and his co-worker left and did not return. The claimant called the employer to state he wanted to resign due to drug use on the job and unsafe working conditions. Prior to his resignation, the claimant had been given a warning for being tardy at work. Continuing work was available at the time of separation.

The claimant testified he tried to fax his appeal several times prior to the due date of December 4, 2014. He tried to fax it the first time around December 2, and when he didn't hear back from the agency, tried calling Iowa Workforce Development. The woman he spoke to could not confirm receipt of his appeal letter so he tried a second time to fax around December 8 or 9. Again, when he did not hear back from the agency, he called to inquire, and was able to successfully transmit his appeal letter on December 30. The appeal was due on December 4, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant filed a timely appeal and voluntarily left his employment with good cause attributable to the employer.

The first issue to be considered in this appeal is whether the claimant'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 claimant filed an appeal in a timely manner but it was not received. When the claimant did not receive acknowledgment of his appeal, he called the agency to confirm. Upon receipt of information to that effect, a second appeal was filed. The claimant again followed up with the agency, and filed his appeal a third time. Under the circumstances, the claimant proactively made three valid attempts to fax his appeal even though it was not received under after the due date. Therefore, the appeal shall be accepted as timely.

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(2), (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:

(2) The claimant left due to unsafe working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, 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 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. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

As a roofer, the claimant's exposure to safety risks was more than the average worker. The claimant's prior complaints to Mr. Simons were sufficient to put the employer on notice of his reasonable concerns. Observing co-workers who say they are smoking marijuana on breaks and are not using the correct safety equipment placed the claimant and his co-workers' lives at risk. Thus, the separation was with good cause attributable to the employer.

DECISION:

The November 24, 2014 (reference 01) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs