

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN M GIELLIS

Claimant

APPEAL NO. 09A-UI-05631-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN CUSTOMER CARE INC

Employer

OC: 02/15/09

Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 10, 2009, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on May 6, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Lisa Allen participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from April 14, 2008, to February 7, 2009. His supervisor was Jason Glew.

During the first week of February 2009, the claimant had decided to stop taking some medication for a health condition, after consulting with his doctor. He knew that he would need to take some time off so his body could adjust to the change. He approached Glew about this and asked if he would lose his job if he took a week off for medical reasons. Glew reassured him that he did not believe he would lose his job. Glew had him fill out a time off statement and instructed him that when he was able to return to work, he should bring in a statement from his doctor releasing him to return to work. He filled out the form, and Glew said he would give it to the human resources representative, Kelly Romberg.

The following week, the claimant's girlfriend received an email stating the claimant was no longer with the company. The claimant never did anything after hearing about the email because he did not think the employer would allow him back to work. He had no further contact with the employer. On February 16, 2009, the Glew and Romberg signed a separation form for

the claimant stating he had resigned for medical reasons. The employer never communicated to the claimant that he had been discharged.

An unemployment insurance decision was mailed to the claimant's last-known address of record on May 6, 2009. The decision concluded he voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by March 20, 2009.

The claimant never received the decision. He filed a written appeal on April 8, 2009, immediately after contacting his local Workforce Development Center and discovering he had been disqualified.

REASONING AND CONCLUSIONS OF LAW:

The claimant's appeal is deemed timely despite it being sent in after the ten-day deadline for appealing because he never received the decision. He filed his appeal immediately after he discovered he had been disqualified. Iowa Code § 96.6-2

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

I do not believe the employer's hearsay evidence about the conversation the claimant had with Glew. The claimant's testimony was credible and is entitled to more weight. I believe the claimant's testimony about filling out the leave request and being told by Glew that he would not lose his job if he took the time off.

The problem here is that the claimant never returned to work or contacted the employer after February 7, 2009. No one in management told the claimant that he was fired. His reliance on an email sent out stating he was no longer with the company was unreasonable. He stressed his financial situation in stating that there was no way he would quit his job, but he did nothing to correct management's mistaken belief that he had quit. He should have obtained a doctor's release when he was able to work again, and provided that release along with an offer to return to work. If the employer had not allowed him to return to work, he could then reasonably believe he was terminated, but not based on an email that said he "was no longer with the company."

DECISION:

The unemployment insurance decision dated March 10, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid

wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css