

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BASHIR EMAM
Claimant

NORDSTROM INC
Employer

APPEAL 21A-UI-22045-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/09/21
Claimant: Appellant (1)

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On October 1, 2021, the claimant/appellant filed an appeal from the July 26, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant voluntarily quitting for personal reasons. The parties were properly notified about the hearing. A telephone hearing was held on December 1, 2021. Claimant participated at the hearing through CST Arabic Interpreter Esra, Identification #13672. Employer did not call into the hearing to participate.

ISSUES:

Is claimant's appeal timely?

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on July 26, 2021. The appellant did not receive the decision. The USPS returned the decision and claimant did not receive it. The IWD resent the decision to the claimant. The claimant received the decision and then contacted IWD to discuss it. An IWD representative told claimant to wait to appeal the decision since claimant was awaiting a decision by the employer if he would be rehired. The claimant did not get rehired and appealed the decision based on the representative's advice to wait.

Claimant began working for employer on September 16, 2020. Claimant last worked as a full-time box opener. Claimant was separated from employment at the end of January of 2021. Claimant was hired on a temporary basis and was going to be hired as a permanent employee at the end of January 2021. Claimant was notified that there was an emergency and he needed to travel back to Sudan. Claimant did not know how long he would be gone and informed the employer he was leaving. The employer informed him that when he returned, he could re-apply

for a position. The claimant left to go to Sudan on February 1, 2021. Claimant returned to Iowa on May 2, 2021. The claimant returned to the employer on May 10, 2021 and offered his services. The employer interviewed with the employer and gave him a schedule. Before claimant could begin working he was notified that he could not start work. The employer's headquarters decided not to re-employ the claimant.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 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, subsections 10 and 11, 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 appellant did not have an opportunity to appeal the unemployment insurance 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). Additionally, the claimant's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD customer service advisor. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant voluntarily quit his employment for good cause attributable to the employer. For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 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. 871-24.25(20) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

Claimant informed the employer that he needed to return to Sudan for an emergency. The claimant did not know how long he would be gone. Claimant left from February 1, 2021, through May 2, 2021. The claimant left for compelling personal reasons, however, the period of absence exceeded ten working days. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The claimant's appeal is timely.

The July 26, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his employment 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.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 6, 2022
Decision Dated and Mailed

cs/mh

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. Individuals who do not qualify for regular unemployment insurance benefits but who were unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa is the week ending June 12, 2021. You may be eligible for benefits incurred prior to June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.