

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM R JOHNSON
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 20A-UI-05651-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/12/20
Claimant: Respondent (2)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On June 9, 2020, Casey's Marketing Company (employer/appellant) filed an appeal from the May 15, 2020 (reference 01) unemployment insurance decision that denied benefits.

A telephone hearing was held on June 30, 2020. The parties were properly notified of the hearing. Claimant did not register a number for the hearing and did not participate. Employer participated by Manager Janet Osterhout. Appellate Coordinator Reina Gonzales appeared as a witness for employer.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the separation from employment disqualifying?
- III. Has claimant been overpaid benefits? Should claimant repay benefits or should the employer be charged?
- IV. Is claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to employer at the above address on May 15, 2020. That was employer's correct address on that date. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by May 25, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Employer appealed the decision via fax on June 9, 2020.

The delay in the appeal was due to issues with USPS. Employer's representative has been inundated with claims for the last several months, due to the pandemic and the resulting loss of employment for millions of people. Despite the decision being sent on May 15, the representative did not receive it in its mailroom until May 29. Employer's representative has been receiving approximately 10,000 pieces of mail per day. The representative picks up mail every day, including Saturdays. The decision was forwarded to the appropriate employee on June 1, 2020. The representative delayed several days in submitting to give employer a chance to review the decision and decide how it wished to proceed.

Claimant began working at Osterhout's store on January 16, 2020. He voluntarily quit on March 9, 2020, by walking off the job and failing to return or otherwise contact employer afterwards. Claimant quit because he was frustrated with Osterhout's enforcement of employer's policy on uniforms. Osterhout had corrected claimant on this on a couple occasions prior to the last day, when she did so again. This time, claimant left after being corrected and did not return. Osterhout attempted to contact claimant after this but was unable to reach him.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$188.00 for a total of ten weeks, from the benefit week ending April 18, 2020 and continuing through the benefit week ending June 20, 2020. The total amount of benefits paid to date is \$1,880.00.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of ten weeks, from the benefit week ending April 18, 2020 and continuing through the benefit week ending June 20, 2020. The total amount of FPUC benefits paid to date is \$6,000.

Employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated May 15, 2020 (reference 01) that allowed unemployment insurance benefits is REVERSED. The administrative law judge finds the appeal is timely and claimant voluntarily quit without good cause attributable to employer.

I. Is the appeal timely?

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter

marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b)

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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."

The delay in the appeal was due to issues with USPS. Employer's representative has been inundated with claims for the last several months, due to the pandemic and the resulting loss of employment for millions of people. Despite the decision being sent on May 15, the representative did not receive it in its mailroom until May 29. Employer picks up mail every day, including Saturdays. Furthermore, employer's representative has been receiving approximately 10,000 pieces of mail per day. The decision was forwarded to the appropriate employee on June 1, 2020. The employee delayed several days in submitting to give employer a chance to review the decision and decide how it wished to proceed.

The administrative law judge finds employer appealed the decision in a timely manner. It did so within a reasonable amount of time of receiving it. The delay was in large part due to issues with USPS. The administrative law judge therefore has jurisdiction to address the underlying issues.

II. Was the separation from employment disqualifying?

Iowa Code section 96.5(1)a 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.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa 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. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried his burden of proving the voluntary leaving was for good cause attributable to employer.

Claimant began working at Osterhout's store on January 16, 2020. He voluntarily quit on March 9, 2020, by walking off the job and failing to return or otherwise contact employer afterwards. Claimant quit because he was frustrated with Osterhout's enforcement of employer's policy on uniforms. Osterhout had corrected claimant on this on a couple occasions prior to the last day, when she did so again. This time, claimant left after being corrected and did not return. Osterhout attempted to contact claimant after this but was unable to reach him.

Claimant quit due to dissatisfaction with the work environment and Osterhout's enforcement of the dress code. This is not a good cause reason for quitting attributable to employer. As such, the separation from employment was disqualifying and benefits must be denied.

II. Was the claimant overpaid benefits?

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the

claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$188.00 for a total of ten weeks, from the benefit week ending April 18, 2020 and continuing through the benefit week ending June 20, 2020. The total amount of benefits paid to date is \$1,880.00.

Because the administrative law judge now finds claimant disqualified from receiving benefits, he has been overpaid benefits in the amount of \$1,880.00. However, benefits shall not be recovered, as employer did not participate in the initial determination to award benefits and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

III. Is the claimant eligible for federal pandemic unemployment compensation?

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of ten weeks,

from the benefit week ending April 18, 2020 and continuing through the benefit week ending June 20, 2020. The total amount of FPUC benefits paid to date is \$6,000.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, he is also disqualified from receiving FPUC benefits. Claimant has therefore been overpaid FPUC benefits in the amount of \$6,000.00. Claimant is required to repay those benefits.

DECISION:

The decision dated May 15, 2020 (reference 01) that allowed benefits is REVERSED. The appeal is timely. Claimant's separation from employment was disqualifying. Benefits must be denied. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.

Claimant has been overpaid regular benefits in the amount of \$1,880.00. However, benefits shall not be recovered. Claimant has been overpaid FPUC benefits in the amount of \$6,000.00. Claimant is required to repay those benefits.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 13, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are currently 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.