

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID DELAPP

Claimant

APPEAL NO. 12A-UI-06569-W

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION

Employer

OC: 01/15/12

Claimant: Appellant (2R)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 19, 2012, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held on September 26, 2012 in the Sioux City Iowa *WORKS* office. The claimant did participate. The employer participated through Mary Otu, the hearing representative from Barnett & Associates, who participated by telephone. Greg Chavis was the claimant's supervisor who participated in person for the employer.

ISSUES:

The issue is whether the appeal is timely.
The second issue is whether the claimant voluntarily quit or was discharged for misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last-known address of record on March 19, 2012. Claimant did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 29, 2012. The claimant attempted to appeal the decision on March 27, 2012, but it was not received by the agency, or, if it was received by the agency, it was lost or misplaced. The appeal was received on June 4, 2012, which is after the date noticed on the disqualification decision.

Claimant worked for the employer beginning on May 16, 2011. He was a full-time sales associate. He was terminated on January 17, 2012, because he failed to meet his sales quota in the month of December 2011. On January 16, 2012, Mr. Chavis told Mr. DeLapp that he would be terminated on January 17, 2012 for failing to meet his sales goals. The claimant quit in lieu of immediate discharge.

REASONING AND CONCLUSIONS OF LAW:

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, 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 administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to an agency error or misinformation or delay or other action pursuant to 871 IAC 24.35(2). The claimant attempted to timely file an appeal but for an unexplained reason, the agency did not receive it.

The second issue is how to treat a quit in lieu of being discharged for unemployment insurance purposes.

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.

Under the unemployment insurance law, a claimant is disqualified from receiving unemployment insurance benefits if the separation from employment is a voluntary quit without good cause attributable to the employer or a discharge for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between

remaining employed or discontinuing the employment relationship and chooses to leave employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989).

The claimant's choice in this case was to submit a resignation or be discharged. He had no choice to remain employed.

This conclusion is supported by 871 IAC 24.26(21), which provides:

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

This subsection addresses a common position taken by employers that a person who has resigned has voluntarily quit despite the fact that the resignation was forced. The provision makes it clear that the separation from employment is not a **voluntary** quit.

In this case, the claimant quit on January 16, 2012, to avoid imminent and certain discharge on January 17, 2012. He faced certain termination on January 17, 2012, if he elected not to resign on January 16, 2012. The employer's witness, Greg Chavis was honest and credible. He did not even allege the claimant committed any type of misconduct. The claimant simply failed to meet sales goals.

The employer's only defense was the technical defense of the timeliness of his appeal. The employer did not even truly offer a defense on the merits of the case.

During the course of the hearing, an issue came to the attention of the agency which cannot be ignored. The file in this matter included the employer's protest which was filed by an individual from Barnett & Associates on February 8, 2012. In that official government record, the employer's representative contended that the claimant quit voluntarily on January 16, 2012. In the remarks section of the Protest form, the employer's representative hand wrote the following statements: "PERSONAL REASONS. CONTINUING WORK WAS AVAILABLE." These statements appear on their face to be false and misleading in violation of Iowa Code section 96.16(2) (2011). These statements appear to directly contradict the employer's sworn testimony at hearing.

Since the parties were not provided notice on this issue, this matter is remanded to the Investigations and Recovery Unit of the Unemployment Division of Iowa Workforce Development to conduct an investigation pursuant to Iowa Code section 96.16(2) (2011), to determine whether the employer made false or misleading statements in an effort to deny the claimant unemployment insurance benefits in bad faith.

DECISION:

The March 19, 2012, reference 01, decision is reversed and remanded. The claimant quit in lieu of discharge and is eligible for benefits. This matter is remanded to the Investigations and Recovery Unit of the Unemployment Division of Iowa Workforce Development to investigate whether the employer's representative made false statements in violation of Iowa Code section 96.16(2) (2011).

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs