

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RODNEY G SMITH
Claimant

HYDRITE CHEMICAL COMPANY
Employer

APPEAL 22A-UI-03905-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/05/21
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Rodney G. Smith, filed an appeal from the January 18, 2022, (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on April 27, 2022. The claimant participated personally. The employer/respondent, Hydrite Chemical Company, did not participate. Official notice of the administrative record was taken. Department Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence, the administrative law judge finds: Claimant began his employment with this employer in 2019 as a bulk tanker driver. He last worked May 29, 2021 when he quit the job to enter into self-employment. Claimant had offered one month’s notice but could not work out his entire notice because he contracted COVID-19. Continuing work was available.

An initial decision (reference 01) was mailed to the claimant/appellant’s address of record on January 18, 2022. The decision contained a warning that an appeal must be filed by January 28, 2022. The decision also directed the appellant to call the customer service line for assistance. Appellant did receive the decision with the appeal period. Appellant filed the appeal on February 1, 2022 (See Department Exhibit 1). The appeal was delayed because he believed he had more time to file the appeal after speaking to an IWD representative.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The evidence presented supports that claimant's appeal was delayed due to an *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant voluntarily quit the employment with good cause attributable to the employer.

Iowa Code section 96.5(1) 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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

Iowa Admin. Code r. 871-24.25(19) 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:

- (19) The claimant left to enter self-employment.

In this case, claimant left his employment with this employer to begin his own company. This may be a personally good reason to quit but it does not meet the definition of good cause attributable to the employer, according to Iowa law. Benefits are denied.

DECISION:

The January 18, 2022 (reference 01) initial decision is affirmed. The appeal is untimely. The claimant voluntarily quit the 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.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development

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May 10, 2022

Decision Dated and Mailed

jlb/ac

NOTE TO CLAIMANT:

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>