

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER A BUHLER
Claimant

APPEAL NO. 09A-UI-02555-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 07/06/08
Claimant: Respondent (4)

Section 96.5(1)a – Quit/Other Employment
Section 96.6(2) – Timeliness of Protest
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer, Fareway, filed an appeal from a decision dated December 4, 2008, reference 04. The decision found the employer's protest was not timely. After due notice was issued a hearing was held by telephone conference call on March 12, 2009. The claimant participated on his own behalf and was represented by Dennis McElwain. The employer participated by Human Resources Representative Kim Garland. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely, whether the protest is timely and whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

A decision was mailed to the employer's last-known address of record on December 4, 2008, stating the protest was not timely. The employer received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 14, 2008. The appeal was filed on December 11, 2008, but not received by Iowa Workforce Development Appeals Section. The employer inquired about the status of the appeal only after receiving the fourth quarter 2008 statement of charges, which was mailed February 9, 2009. A copy of the original appeal letter was then faxed on February 18, 2009.

The employer received the notice of claim by mail July 16, 2008, and returned it by United States Postal Service on July 17, 2008. It was mailed along with two other notices of claim and the employer knows it was received because there was a decision issued on one of the claims, but not on the other two. The employer contacted Iowa Workforce Development on October 2, 2008, asking about the status of the fact-finding and was told the fact finding interviews were delayed due to the increase in claims during the summer flooding of 2008. The next notice the employer received was the decision on the untimely protest.

Christopher Buhler was employed by Fareway from September 2, 2006 until April 5, 2007 as a part-time clerk. He gave a verbal resignation to Manager Mike Hammel because he had been offered, and accepted, better employment with Alorica, a company in South Dakota. He accepted the new job and worked for this employer until July 2008.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

The employer filed both a timely protest and a timely appeal. The protest was received by Iowa Workforce Development but apparently misplaced after receipt. The appeal was timely but not received by the Appeals Section until a duplicate was sent on February 18, 2009, pursuant to the fourth quarter 2008 statement of charges. The protest and the appeal shall be accepted as timely.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:
 - a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant left for the sole purpose of accepting better employment from another company. He did accept the work and performed services for the new employer. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer. However, under that same Code section he has requalified by working in the new employment.

DECISION:

The decision of the representative dated December 4, 2008, reference 04, is modified in favor of the appellant. Christopher Buhler is qualified for benefits, provided he is otherwise eligible. However, the account of Fareway shall not be charged with benefits paid to the claimant.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs