

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THEODORE K DUPUY
Claimant

APPEAL NO. 10A-UI-05326-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOMENET INC
Employer

**Original Claim: 03/07/10
Claimant: Respondent (4)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 1, 2010, reference 02, which held claimant eligible for unemployment insurance benefits after an untimely protest. After due notice, a telephone conference hearing was scheduled for and held on May 27, 2010. Employer participated by Rhonda Holly, CFO; Mark Owens, Regional Sales Manager; and Timmy James, Director of Sales. Claimant failed to respond to the hearing notice and did not participate. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on January 5, 2010. Claimant quit for a new job. Claimant worked at the new job for about six weeks before a separation of employment occurred.

Employer had a payroll service as its agent for unemployment. The agent moved to a new address and the protest was slow in getting forwarded. The protest was received after the protest due date. Employer had actual receipt of the notice of claim form on March 30, 2010 and protested on that same day.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of a new job. However, since claimant worked at the new job before a layoff, he has qualified for unemployment. Employer's account shall not be charged.

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.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

Employer's protest is timely, as it was filed on the first day of actual notice of the claim. Employer should not be prejudiced by slow delivery of mail due to a change in address.

Iowa Code section 96.6-2 provides in pertinent part:

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.

DECISION:

The decision of the representative dated April 1, 2010, reference 02, is modified. Employer's account shall not be charged. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. Employer's appeal is timely.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw