

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RUSSELL FREES

Claimant

AREA PRO PAINTING LLC

Employer

APPEAL NO. 14A-UI-04802-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/24/12

Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Russell Frees (claimant) appealed an unemployment insurance decision dated December 12, 2013, (reference 01), which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Area Pro Painting, LLC (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on June 2, 2014. The claimant participated in the hearing. The employer participated through owner Ken Beard. Exhibit D-1 was admitted into evidence. This hearing was held simultaneously with Appeal Number 14A-UI-04803-B.

ISSUE:

The issue is whether the claimant filed a timely appeal or established a legal excuse for filing a late appeal, and if so, whether his voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on December 12, 2013. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 22, 2013. The appeal was not filed until April 18, 2014, which is after the date noticed on the disqualification decision. The appeal was filed in response to an overpayment decision issued on April 7, 2014.

The claimant worked as a full-time painter from March 12, 2012, through March 21, 2012, after which he stopped reporting to work. He did not inform the owner he was quitting but left because he could not get along with a co-worker. Continuing work was available.

REASONING AND CONCLUSIONS OF LAW:

The 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. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant did not receive the decision within the ten-day time period allowed for the appeal. He filed an appeal after receiving information he had been overpaid unemployment insurance benefits. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to return to work after March 21, 2012.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated December 12, 2013, (reference 01), is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs