

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL L FISHER**  
Claimant

**ROBERT HALF CORPORATION**  
Employer

**APPEAL NO: 10A-UI-05768-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/12/09**  
**Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal  
871 IAC 24.35(2) – Appeal Delay  
Section 96.5-1-d – Voluntary Quit/Non-Job Related Injury  
871 IAC 24.25(35) – Non-job Related Injury  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 31, 2010 reference 01 that held he voluntarily quit without good cause on March 2, 2010, and benefits are denied. A telephone hearing was held on June 3, 2010. The claimant participated. Eric Halter, Recruiter, participated for the employer. Claimant Exhibit A was received as evidence.

**ISSUE:**

Whether the appeal is timely.

Whether the claimant voluntarily quit with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The department mailed the decision to the claimant's address of record on March 31, 2010, but he did not receive it until April 12 that is after the appeal deadline. The claimant contacted the department, and he was advised to file an appeal that he did submit on April 14.

The claimant began work on assignment for Iowa Health as a full-time, temporary PC technician on October 19, 2009, and last worked the assignment on February 26, 2010. The claimant called his employer to report a medical issue stating he would not be able to continue work at that time. The employer instructed the claimant to let the employer know when he recovered.

The claimant had surgery for a neck, non-work-related injury and he received a restricted work release to work only four hours a day on April. Just recently, the claimant received a full-duty,

unrestricted medical release to return to work on June 1, 2010 that he has not presented to the employer.

**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.

871 IAC 24.35(2) provides:

(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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

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 department 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 department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the claimant had a good cause for his appeal delay. It appears the department decision was mailed late or delivered late to the claimant.

Iowa Code section 96.5-1-d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant voluntarily left employment due to a non-job-related injury upon the advice of his physician with notice to the employer, and he has not been able to return to full-time employment until June 1, 2010. The employment separation on February 26, 2010 is a voluntary leaving without good cause attributable to the employer.

The employment separation due to a non-job-related injury is a disqualifying event, and it remains so until the claimant receives an unrestricted work release for full-time employment, and returns to the employer to offer his services. If the employer fails to re-employ the claimant pursuant to his June 1, 2010, doctor's release, the claimant may re-file for benefits, because this creates a new separation from employment issue that was not determined in this case. The claimant is able and available for full-time work.

**DECISION:**

The department decision dated March 31, 2010, reference 01, is affirmed. The claimant voluntarily left without good cause attributable to the employer effective February 26, 2010 due to a non-job-related injury and did not receive an unrestricted work release until June 1, 2010. Benefits are denied. If the claimant returns to the employer and offers his unrestricted work release, and the employer fails to offer him work, the claimant is not required to re-qualify in order to be eligible for benefits by reason of this separation. The claimant is able and available for work.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs