

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TRAVIS L DAVIS**  
Claimant

**3T SERVICES INC**  
Employer

**APPEAL 17A-UI-02090-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/18/16**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Travis L. Davis (claimant) filed an appeal from the January 6, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination 3T Services Inc. (employer) discharged him for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on March 17, 2017. The claimant participated. The employer participated through Director of Human Resources Cindy Zeman. Employer's Exhibit 1 was received. Department's Exhibits D1 through D4 were received. Official notice was taken of the administrative record.

**ISSUE:**

Is the appeal timely?

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Welder Helper beginning on December 9, 2013, and was separated from employment on December 7, 2016. The claimant was hired to work for \$13.00 an hour and was told that travel would be required for the job. The employer requires its employees to travel to jobs 95 percent of the time.

On December 7, 2016, the claimant notified Director of Human Resources Cindy Zeman that he would no longer be willing to travel as it was putting a strain on his marriage. Zeman explained that the job requires travel. The claimant then said if they were not willing to assign him solely local jobs than he would be quitting his employment. Zeman again stated the job required travel. The claimant responded that he was turning in his two-week notice. The claimant then requested to sit down to discuss the situation with Zeman and the owner of the company. Zeman stated there was nothing left to discuss and he could pick up his personal belongings.

The claimant filed his original claim for unemployment insurance benefits the week of December 18, 2016. The administrative record shows that he filed for benefits for the weeks ending December 31, 2016 and January 7, 2017. He reported wages of \$171.00 for week ending December 31 and \$150.00 for week ending January 7.

The unemployment insurance decision disqualifying the claimant from benefits was mailed to the claimant's address on January 6, 2017. The decision contained a warning that an appeal was to be filed no later than January 16, 2017. A Letter of Inquiry was mailed to the claimant's address on January 11, 2017. A second unemployment insurance decision dated January 24, 2017 was mailed to the claimant's address. The claimant stated he did not receive any of the documents mailed to his address.

The claimant was unable to inquire about his lack of benefits from the local office until February 23, 2017 because that was his first day off work after filing for benefits. He began a new job on December 23, 2016 working 40 hours a week earning \$16.50 an hour. That job ended on January 15, 2017. The claimant denied filing a continued weekly claim for benefits during those weeks. The claimant then took another job that began on January 20, 2017 and ended February 13, 2017. He worked 40 hours a week and earned \$16.50 an hour. He began a third job on February 15, 2017. The claimant filed his appeal on February 23, 2017 when he first went to Iowa Workforce Development (IWD) to inquire as to why he was not receiving benefits. The claimant filed his appeal at that time.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely and, even if it was timely, the claimant voluntarily quit his employment without good cause attributable to the employer.

Iowa Code § 96.6(2) provides:

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. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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. Bd. 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 claimant testified that he did not receive a copy of the unemployment hearing decision which was mailed to his address on January 6, 2017. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's testimony is not credible. The claimant's mailing address remained the same throughout the entire process. He received the hearing notice mailed to him on February 27, 2017 at the same address. The claimant denied receiving any of the three letters that required him to respond to IWD during the month of January. Additionally, other parts of the claimant's testimony were inconsistent with the administrative record. The claimant testified he did not make a weekly claim for benefits for the weeks ending December 31 and January 7; however, the administrative record shows that he clearly did file for benefits those weeks. Not only did the claimant file for benefits those weeks, he reported wages earned those weeks in the amounts of \$171.00 and \$150.00 but provided conflicting testimony when he stated that he worked 40 hours a week earning \$16.50 an hour which would

result in wages of \$660.00 a week. Finally, the claimant last filed his continued weekly claim for benefits the week of January 7, 2017 and the following week is when he likely would have received the disqualification decision. Based on the claimant's inconsistent testimony with other information provided to the agency, his testimony is not found to be credible.

The claimant's failure to file his appeal within the ten days was not due to any agency error or misinformation or delay or other action of the United States Postal Service. Therefore, his appeal was not timely filed. The decision dated January 6, 2017, reference 01, remains in effect as the appeal was not timely filed.

In the alternative, even if the claimant's appeal had been timely filed, he voluntarily quit his employment without good cause attributable to the employer and benefits would be denied. Iowa law disqualifies individuals who voluntarily quit employment without good cause attributable to the employer from receiving unemployment insurance benefits. Iowa Code § 96.5(1). An individual who quits due to family responsibilities or serious family needs, who refuses to perform the assigned work as instructed, or who quits due to the commuting distance provided he was aware of the distance when hired is presumed to have quit without good cause attributable to the employer. Iowa Admin. Code r. 871-24.25. In this case, the claimant quit because the travel required by the job, which he knew about when hired and was required for 95% of the employer's jobs, was causing unrest in his marriage. While the claimant may have had good personal reasons for leaving his position, it was not for a good-cause reason attributable to the employer according to Iowa law.

**DECISION:**

The January 6, 2017, reference 01, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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