

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER J MAHAFFEY
Claimant

APPEAL NO. 13A-UI-13183-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 11/03/13
Claimant: Appellant (1)

Iowa Code Section 96.5(1)(j) – Temporary Employment Separation
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Tyler Mahaffey filed an appeal from the November 19, 2013, reference 01, decision that denied benefits based on a November 3, 2013 separation of Team Staffing Solutions, Inc. After due notice was issued, a hearing was held on December 18, 2013. Mr. Mahaffey participated. Sarah Fiedler represented the employer and presented additional testimony through Blake Radel. The parties waived formal notice on the timeliness of appeal issue. Exhibit One and Department Exhibits D-1 and D-2 were received into evidence.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

Whether Mr. Mahaffey's November 2013 separation from Team Staffing Solutions was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 19, 2013, Iowa Workforce Development mailed a copy of the November 19, 2013, reference 01, decision to Tyler Mahaffey at his last-known address of record. The decision denied benefits based on a November 3, 2013 separation from Team Staffing Solutions. The decision warned that an appeal from the decision must be postmarked by November 29, 2013 or received by the Appeals Section by that date. The decision also indicated that if the appeal deadline fell on a Saturday, Sunday, or legal holiday, the deadline would be extended to the next working day. November 29, 2013 was the Friday following Thanksgiving, was a state holiday, and Workforce Development offices were closed. The next working day was Monday, December 2, 2013. On December 2, 2013, the Appeals Section received Mr. Mahaffey's appeal by fax. Mr. Mahaffey had not yet received the written decision denying benefits. Mr. Mahaffey had instead contacted Workforce Development to inquire about his benefit status and had through that contact learned of the decision denying benefits.

Tyler Mahaffey started his employment with Team Staffing Solutions, L.L.C., on August 9, 2013 and performed work in a single full-time, temp-to-hire assignment. Mr. Mahaffey completed the assignment on November 4, 2013. The client business ended the assignment on that date after concluding that Mr. Mahaffey had taken too long to respond to an offer of permanent employment with the client business. Blake Radel, General Manager of the Team Staffing Solutions branch in Mt. Pleasant, notified Mr. Mahaffey on November 4, 2013 that the assignment had been ended. Ms. Radel asked Mr. Mahaffey to return the work badge that had been issued to him in connection with the assignment. Mr. Mahaffey did not ask for further work and Ms. Radel did not mention further work. Mr. Mahaffey had decided not to seek further work through Team Staffing because he lacked transportation.

On November 6, 2013, Mr. Mahaffey delivered his work badge to Team Staffing. Mr. Mahaffey did not inquire about additional work.

At the start of Mr. Mahaffey's employment, the employer had Mr. Mahaffey sign a Notification Requirement Availability for Work Assignments document. The document indicated in clear and concise language, that Mr. Mahaffey was obligated to contact the temporary employment agency within three working days of the end of an assignment for placement in a new assignment or be deemed a voluntary quit. The policy indicated that if Mr. Mahaffey was deemed to have voluntarily quit the employment, that could affect his eligibility for unemployment insurance benefits. Mr. Mahaffey signed the document and received a copy of the document he signed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The evidence establishes a timely appeal. The November 29, 2013, appeal deadline was extended by operation of law to Monday, December 2, 2013 because the appeal deadline fell on a day when state offices were closed. The claimant's appeal was received by fax on December 2, 2013 and was deemed filed on that date. The administrative law judge had jurisdiction to enter a decision on the merits of the appeal.

The assignment ended on November 4, 2013, when the client business ended the assignment after concluding that Mr. Mahaffey had waited too long to respond to the offer of a permanent position with the client business. The discharge from the assignment was no disqualifying reason and the discharge would not disqualify Mr. Mahaffey for unemployment insurance benefits. See Iowa Code section 96.5(1) (regarding discharges for misconduct) and 871 IAC 24.32(1)(a) (defining misconduct).

Iowa Code section 96.5-1-j 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:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary

employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The employer's end-of-assignment notification policy meets the requirements of Iowa Code section 96.5(1)(j). The employer had Mr. Mahaffey sign the policy and provided him with a copy of the policy. Accordingly, Mr. Mahaffey was obligated to contact the employer within three working days of the end of an assignment for placement in a new assignment or be deemed a voluntary quit and risk ineligibility for unemployment insurance benefits. Mr. Mahaffey elected not to request a new assignment because he lacked transportation.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Mahaffey's November 4, 2013 separation from the temporary employment agency was without good cause attributable to the temporary employment agency. Mr. Mahaffey is disqualified for benefits until he had worked in and been paid wages for insured work equal to 10 times his weekly benefit amount, provided he meets all other eligibility requirements. The employer's account will not be charged for benefits.

DECISION:

The claimant's appeal was timely. The Agency representative's November 19, 2013, reference 01, decision is affirmed. The claimant's November 2013 separation from the temporary employment agency was without good cause attributable to the temporary employment agency. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount, provided he meets all other eligibility requirements. The employer's account will not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs