

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JON A MISNER**  
Claimant

**APPEAL NO: 09A-UI-19106-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 02/22/09**  
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.26(1) – Job Change  
871 IAC 24.35(2) – Appeal Delay  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated December 11, 2009, reference 02, that held he voluntarily quit employment without good cause attributable to the employer on November 15, 2009, and benefits are denied. A telephone hearing was held on February 2, 2010. The claimant participated. The employer did not participate. Claimant Exhibit A was received as evidence.

**ISSUES:**

Whether the appeal is timely.

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds: The department mailed the decision to the claimant's address of record on December 11. When the claimant noticed he hadn't received mail for about one week, he went to his local post office on December 18, and discovered it was holding his mail as the local carrier did not believe he still lived at that address. The claimant made no request to have his mail held or did he submit a change of address. When the claimant went through his mail, he learned about the decision, and went to his local Workforce Center and submitted an appeal on December 22.

The claimant was hired to work days, as an in-stock team member on July 25, 2009. After working this job, management requested he move to a second shift job unloading trucks with the understanding it would be a temporary assignment for a couple of months. The claimant accepted the move as a temporary job change. After two months had passed, the claimant requested he be moved back to his job for hire and the employer denied it. When the claimant stated he was no longer physically able to do his current job, and needed to return to the

in-stock team, the employer replied that he must continue this job or there was nothing else available. The claimant chose to leave his employment rather than work unloading trucks.

The employer failed to respond to the hearing notice.

**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 affected a timely appeal, as the one-day delay would due to a postal service delivery err. The postal service erred by holding the claimant's mail delivery that was not at his request for one-week, and this is a good cause for the delay of the appeal.

Iowa Code section 96.5-1 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.

871 IAC 24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The administrative law judge further concludes that the claimant voluntarily quit employment with good cause attributable to the employer effective November 15, 2009 due to a substantial change in his job position.

The claimant's contract for hire was to work days, as an in-stock team member. The claimant agreed to a temporary job change unloading trucks on the second shift. The claimant's request to move back to his job for hire after working two months was in accord with the job change. The employer's refusal to move him back to his contract for hire position and the claimant's decision to leave is with good cause attributable to the employer.

**DECISION:**

The department decision dated December 11, 2009, reference 02, is reversed. The claimant's appeal is timely. The claimant voluntarily quit with good cause attributable to the employer on November 15, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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