

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TYLER R GARDNER
410 W WEBSTER ST #3
GOLDFIELD IA 50542

ADVANCED DRAINAGE SYSTEMS INC
c/o ADP/UCM
PO BOX 66744
ST LOUIS MO 63166-6744

Appeal Number: 04A-UI-10285-AT
OC: 08-01-04 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Tyler R. Gardner filed an appeal from an unemployment insurance decision dated August 25, 2004, reference 01, which disqualified him for benefits. After due notice was issued, a telephone hearing was held on October 6, 2004. Mr. Gardner responded to the notice, but the administrative law judge was not able to contact him. The claimant's phone was answered by a recording saying the call could not be completed as dialed. Mitch Kirkland, Charles Askvig and Darlene Solis participated for the employer, Advanced Drainage Systems, Inc. Exhibit D-1, the claimant's appeal letter, was admitted into evidence.

Mr. Gardner called the administrative law judge after the hearing. Because of the testimony given by the employer's witnesses, the administrative law judge requested that Mr. Gardner provide him with documentation of dates of employment and earnings from a subsequent employer. Mr. Gardner indicated that he would provide the information, but he did not. Due notice was issued for a second hearing to be held October 25, 2004. Again, Mr. Gardner's phone was answered by a recording saying that the call could not be completed as dialed. It was unnecessary to take additional testimony from the employer. The claimant has not contacted the administrative law judge since the time of the rescheduled hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all matters of record, the administrative law judge finds: Tyler R. Gardner last worked for Advanced Drainage Systems, Inc. on July 30, 2004. He attended a company picnic on Saturday, July 31, 2004. Although he was scheduled to work on August 2, 3, and 4, 2004, he did not report to work or contact the employer. When he picked up his paycheck on August 5, 2004, he said that he had found other work.

Mr. Gardner filed a claim for unemployment insurance benefits effective August 1, 2004. He did not receive the fact-finding decision dated August 25, 2004. He filed an appeal on September 20, 2004 when he learned of the existence of the adverse decision.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the administrative law judge has jurisdiction to rule on the merits of this case. Iowa Code section 96.6-2 establishes a general rule that an appeal from a fact-finding decision must be filed within ten days after its issuance. The Supreme Court of Iowa has ruled that this is a jurisdictional requirement. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). The Court has also ruled, however, that the time limit does not apply mechanically if an individual does not receive a fact-finding decision until after the end of the appeal period. In that circumstance, the question becomes whether the individual filed the appeal within a reasonable amount of time after learning of the adverse decision. See Eves v. Iowa Employment Security Commission, 211 N.W.2d 324 (Iowa 1973).

The evidence in this record persuades the administrative law judge that Mr. Gardner filed his appeal immediately upon learning of the existence of the adverse decision. Under these circumstances, the appeal can be accepted as timely.

The remaining question is whether the evidence establishes that Mr. Gardner left employment with good cause attributable to the employer. It does not.

Iowa Code Section 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed

services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Mr. Gardner has yet to submit evidence establishing the existence of another job. Furthermore, the administrative law judge notes that the unemployment insurance claim was filed as of August 1, 2004, before Mr. Gardner announced that he had accepted other employment. The administrative law judge concludes that the provisions of Section 96.5-1a do not apply in these circumstances. The evidence establishes that Mr. Gardner abandoned his job by failing to report to work on August 2, 3, and 4 and by declining to return to work when he picked up his paycheck on August 5, 2004. Benefits are withheld.

DECISION:

The unemployment insurance decision dated August 25, 2004, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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