

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CYRUS D BANKS**

Claimant

**QPS EMPLOYMENT GROUP INC**

Employer

**APPEAL 19A-UI-05835-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/09/19**

**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:**

On July 23, 2019, Cyrus D. Banks (claimant) filed an appeal from the July 11, 2019, reference 04, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with QPS Employment Group, Inc. (employer) when he failed to contact or seek work with the employer for more than three days after the end of his assignment. The parties were properly notified about the hearing. A telephone hearing began on August 14, 2019. Shortly after going on the record, the claimant stated he had thrown the employer's proposed documents away and did not have them for the hearing. The parties agreed to postpone the hearing to August 16, 2019 at 8:00 a.m. The claimant and employer provided email addresses where the exhibits could be sent before the hearing. The claimant was cautioned that if he did not receive the exhibits by noon on that day, he needed to contact the Appeals Bureau to make sure he got them. The exhibits were emailed. Initially, the email provided by the claimant was incorrect. A clerk from the Appeals Bureau contacted the claimant and obtained a corrected email address. The exhibits were forwarded to both parties.

The hearing reconvened on August 16. The claimant answered when called the number provided. The employer participated through Senior Recruiter Jessica Stanley and was represented by Mai Lor. The claimant stated he did not have the exhibits for the hearing. He was unable to provide an explanation as to why he did not have them or why he had not contacted the Appeals Bureau as instructed. The administrative law judge started reading the exhibits to the claimant so he would know what was being added into the record and the claimant disconnected from the hearing. The claimant was again contacted at the number provided and did not answer. He did not participate in the hearing. The Employer's Exhibits 1 through 4 and the Department's Exhibits D1 and D2 were admitted into the record.

**ISSUES:**

Is the claimant's appeal timely?

Did the claimant voluntarily quit by not reporting for additional work assignments within three business days of the end of his last assignment?

## **FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed in a temporary full-time position as a Production Worker for the employer's client PPG beginning on October 1, 2018. The employer has a policy stating employees need to notify the employer within three days of the end of an assignment and request additional work or they will be considered to have voluntarily quit employment. The claimant received a copy of the policy when he was hired.

The claimant applied for a full-time position with PPG, but was not hired. On June 11, 2019, PPG ended the claimant's assignment and Senior Recruiter Jessica Stanley notified the claimant. The claimant did not seek additional work from the employer.

The disqualification decision was mailed to the claimant's last known address of record on July 11, 2019. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 21, 2019. The appeal was not filed until July 22, 2019, which is after the date noticed on the disqualification decision, because he did not receive the decision in the mail.

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

### *I. Is the claimant's appeal timely?*

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

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

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

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant did not receive the decision but did file an appeal eleven days after the decision was made. It is reasonable to conclude that he filed the appeal within ten days of learning of the disqualification decision. Therefore, the appeal shall be accepted as timely.

*II. Did the claimant voluntarily quit by not reporting for additional work assignments within three business days of the end of his last assignment?*

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

- 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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

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

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

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an assignment *and* who seeks reassignment." (Emphasis supplied.)

In this case, the employer had notice of the claimant's availability because it notified him of the end of the assignment but he did not request another assignment. Therefore, he is considered to have quit the employment without good cause attributable to the employer. Benefits are denied.

**DECISION:**

The claimant's appeal is timely. The July 11, 2019, reference 04, unemployment insurance decision is affirmed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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