

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARSWEDI K SCOTT**  
Claimant

**APPEAL NO. 13A-UI-13717-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST JANITORIAL SERVICE INC**  
Employer

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

Section 96.5(1) - Voluntary Quit  
Section 96.6 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Marswedi Scott filed an appeal from the November 27, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 8, 2014. Mr. Scott participated and presented additional testimony through Geoff Willing. Aaron Tank represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

**ISSUES:**

Whether there is good cause to treat Mr. Scott's late appeal as a timely appeal. There is.

Whether Mr. Scott voluntarily quit the employment for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 27, 2013, Iowa Workforce Development mailed a copy of the November 27, 2013, reference 01, decision to Marswedi Scott at his last-known address of record: 1100 Arthur St., Apt. H4, Iowa City, IA 52240-6612. The decision denied benefits. The decision contained a warning that any appeal from the decision had to be postmarked by December 7, 2013 or received by the Appeals Section by that date. At the time the decision was mailed to Mr. Scott, Mr. Scott was in the process of vacating the apartment on Arthur Street. Mr. Scott surrendered his mailbox key to his landlord and vacated the apartment on December 1, 2013. From that point onward, Mr. Scott had no access to the mailbox on Arthur Street. From that point onward, Mr. Scott did not have a permanent address. Mr. Scott was traveling back and forth from Chicago. When Mr. Scott was in the Iowa City area, he stayed with a friend in North Liberty. Mr. Scott subsequently began using the business address of one of his employers as his address of record: 212 - 1st St., Coralville, IA 52241. Mr. Scott did not receive the November 27, 2013 reference 01 decision that was mailed to him on November 27. Mr. Scott did not update his address of record with Workforce Development until December 16, 2013 when he faxed an appeal to the Appeals Section. Ms. Scott had called a toll-free number for Workforce Development that day, been informed of the decision denying benefits, and been

informed that he needed to file an appeal that same day. The Appeals Section received Mr. Scott's appeal on December 16, 2013.

Mr. Scott was employed by Midwest Janitorial Service as a full-time custodian from December 2012 until October 18, 2013 when he voluntarily quit. Mr. Scott quit the employment so that he could be able to travel back and forth to Chicago as needed. Mr. Scott's father was caring for Mr. Scott's son. Mr. Scott's father has lung cancer. Mr. Scott wanted to be able to assist his father with household chores as needed.

At the time Mr. Scott quit the employment at Midwest Janitorial Service, he was also employed in a different, full-time, seasonal job. Mr. Scott decided that he could not continue to work in both jobs and be able to travel back and forth to Chicago. Mr. Scott elected to continue in the full-time, seasonal position instead of the full-time position at Midwest Janitorial Service.

### **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 in the record establishes 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. IDJS, 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. IDJS, 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. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did not have a reasonable opportunity to file a timely appeal by the appeal deadline, because he had not yet received the decision. Mr. Scott learned of the decision that denied benefits on December 16, 2013 and filed his appeal the same day. There is good cause to treat the appeal as a timely appeal.

Iowa Code section 96.5-1-c, f 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992).

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence in the record indicates that Mr. Scott's decision to quit the employment Midwest janitorial service was not so much based on a need to care for his father, but a need to assist his father with household chores from time to time, in part because the father was caring for Mr. Scott's son. While this was a compelling personal reason to leave the employment, it did not constitute good cause attributable to the employer. Accordingly, Mr. Scott is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

**DECISION:**

The Agency representative's November 27, 2013, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs