

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDRIS GEHY
Claimant

APPEAL NO. 13A-UI-14270-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

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

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Edris Gehy filed an appeal from a representative's decision dated December 5, 2013, reference 02, which held that the claimant voluntarily quit work on November 4, 2013 under disqualifying conditions. After due notice was issued, a hearing was held by telephone on January 21, 2014. The claimant participated. The employer participated by Ms. Julie Stence.

ISSUE:

At issue in this matter is whether the appeal filed herein was timely.

FINDINGS OF FACT:

The administrative law judge having considered all of the evidence in the record, finds: That a disqualification decision was mailed to the claimant's last-known address of record on December 5, 2013. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by Appeals Section by December 15, 2013. The appeal was not filed until December 23, 2013, which is after the date noticed on the disqualification decision.

Mr. Gehy attempted to fax his appeal on the December 5, 2013 decision via facsimile from his home on December 12, 2013. The attempt to file the appeal via facsimile was not successful and was not received by Iowa Workforce Development. Approximately one week later Mr. Gehy checked to see if the appeal had been received and when he found it had not, Mr. Gehy went to an area Claims Center where he completed and signed his appeal dated December 23, 2013. The appeal was then transmitted from the Claims Center to the Appeals Section that day.

Mr. Gehy filed an appeal in this matter because he had disagreed with the adjudication finding that he had voluntarily quit employment with Express Services on November 4, 2013 to accept other employment. Mr. Gehy had completed a previous assignment with Express Services prior to that date and when no further work was available at that time through Express Services,

Mr. Gehy accepted temporary employment on November 4, 2013 with a different temporary employment firm. Subsequently Mr. Gehy resumed accepting temporary employment assignments through Express Services.

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 administrative law judge concludes that the claimant has failed to file an appeal within the time period prescribed by the Employment Security Law. The delay as not due to any Agency error or misinformation or delay or other action by the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the claimant has failed to file a timely appeal pursuant to Iowa Code section 96.6(2) and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment. See Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979); Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979) and Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1900).

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

a. If transmitted via the United States postal service or its successor, 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 is 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.

b. If transmitted by any means other than the United States postal service or its successor, on the date it is received by the department.

If subsequently determined by further appeal that the claimant's appeal should be considered timely; the administrative law judge concludes based upon the evidence in the record that the claimant did not voluntarily quit employment with Express Services on November 4, 2013.

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.

The evidence in the record shows that Mr. Gehy had completed a previous assignment with Express Services and the claimant had accepted a temporary assignment with a different temporary employment service on November 4, 2013 because no work was available to him with Express Services that day. Because the claimant was not employed by Express Services that day, the administrative law judge concludes that the claimant did not voluntarily quit employment with Express Services. No work was available to the claimant that day with Express Services and the claimant took the opportunity to obtain one-days' work with a different employment service. The claimant's acceptance of one-days' work with another employer during a period of layoff from Express Services does not constitute a voluntary quit under disqualifying conditions.

DECISION:

The representative's decision dated December 5, 2013, reference 02, is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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