

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES E RHEINGANS
Claimant

APPEAL NO. 11A-UI-08645-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 05/30/10
Claimant: Appellant (4)

Section 96.5-1-j – Temporary Employment
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 5, 2011, reference 03, that concluded he was eligible for unemployment insurance benefits because he left part-time employment. A telephone hearing was held on August 4, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibits A-1 and A-2 were admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits effective May 30, 2010, after his full-time employment with Cummings Filtration ended.

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant started work full-time for the employer on September 25, 2010, on an assignment at Eaton Corporation. That assignment ended on March 31, 2011, when his contract with Eaton Corporation ended and was not renewed. A secretary with the employer informed the claimant about this on March 31. The claimant asked to speak to his staffing representative with the employer, John Ritter. He asked Ritter about another assignment or another position at Eaton Corporation. Ritter said he would have to consult with the human resources representative at Eaton Corporation and there were no other openings available. The claimant made several follow-up calls after starting on April 1 about additional work but whenever he spoke to Ritter, he was told there was no other work available for him.

The claimant reopened his claim for unemployment insurance benefits during the week of March 27, 2011.

An unemployment insurance decision was mailed to the claimant's last known address of record on May 5, 2011. The decision concluded the claimant was eligible for unemployment insurance benefits because he quit part-time work with the employer on **April 5, 2010 (sic)**, but had enough wages from other employers to be qualified and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by May 15, 2011.

The claimant received the decision within the ten-day period for appealing the decision. He did not think that the decision had any effect because it said he was qualified and he continued to receive benefits charged to his base-period employer, Cummings Filtration. He filed a written appeal on June 29, 2011, after receiving some notice that decision was issued in error.

The agency mailed another unemployment insurance decision regarding the same separation from employment on July 13, 2011, reference 06, that concluded the claimant was disqualified for voluntarily quitting employment without good cause attributable to the employer on April 5, 2011. The claimant filed a timely appeal of the decision on July 15, 2011.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeal of the decision dated May 5, 2011, was timely. The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The claimant's appeal is deemed timely because the failure to file a timely appeal was due to an Agency error, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The claimant could not reasonably have understood the decision on May 5, 2011, was adverse to him because it referred to a separation date before he started working for the employer, it said he was eligible based on his other employment, and he continued to receive unemployment insurance benefits. In addition, the Agency for some reason issued a second decision regarding his separation from employment with the employer on July 13, 2011, which the claimant timely appealed.

Iowa Code § 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

The evidence establishes the claimant contacted the employer about reemployment on March 31, April 1, and several times afterward and the employer did not have work for him. The evidence fails to show his employment ended due to any misconduct by the claimant as defined by Iowa Code 96.5-2-a. He is qualified to receive benefits, if he is otherwise eligible.

DECISION:

The unemployment insurance decision dated May 5, 2011, reference 03, is modified in favor of the claimant. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw