

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN D NAAB
Claimant

APPEAL NO. 06A-UI-11659-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GALLON INC
Employer

**OC: 10/15/06 R: 02
Claimant: Appellant (4)**

Section 96.5(1)a – Quit for Other Employment
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

John Naab filed an appeal from a representative's decision dated November 20, 2006, reference 02, which denied benefits based on his separation from Gallon, Inc. After due notice was issued, a hearing was held by telephone on December 19, 2006. Mr. Naab participated personally. The employer participated by Jason Shepherd, Co-Owner, and Carmen Major, Office Administrator.

ISSUE:

At issue in this matter is whether Mr. Naab filed a timely appeal and, if so, whether he was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Mr. Naab at his address of record on November 20, 2006. According to the letter of appeal filed on December 6, 2006, he did not receive the decision. He did not learn of the decision until he received a notice of overpayment dated November 27, 2006.

Mr. Naab was employed by Gallon, Inc. from October 31, 2005 until May 1, 2006. He was hired to work as a journeyman plumber working in new construction projects. Approximately three weeks before his separation, he was promoted to a position where he was in charge of a one- or two-person crew. He indicated he would try the position but found that he did not like being in charge. He notified Bill Major that he did not like the new position. The employer was in the process of finding someone to supervise the crew, but Mr. Naab had not been made aware of this fact. He never threatened to quit because of the change in his duties. Continued work would have been available if he had not quit.

Prior to quitting Gallon, Inc., Mr. Naab made arrangements to return to his former employment with Goering Plumbing. He went immediately from Gallon, Inc. to Goering Plumbing and

remained in the new employment until approximately October 17, 2006. Mr. Naab filed a claim for job insurance benefits effective October 15, 2006.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Mr. Naab's appeal should be considered timely filed as required by Iowa Code section 96.6(2). His testimony regarding receipt of the disqualifying decision was equivocal at best. However, he indicated in his appeal letter that he did not receive the decision in the mail. Since the appeal letter was written closer in time to when the decision would have been sent, the administrative law judge considers it more accurate than his testimony. Inasmuch as Mr. Naab did not receive the disqualifying decision, he could not have filed an appeal by the November 30, 2006 due date. For the above reasons, the appeal filed on December 6, 2006 shall be deemed filed.

The next issue is whether Mr. Naab's separation from Gallon, Inc. constituted a disqualifying event. He was unhappy being in charge of a crew. However, the employer was not aware that he was so unhappy that he planned to quit. The employer may well have accelerated its efforts to find a replacement supervisor if it had known Mr. Naab intended to quit. For the above reasons, his decision to look for work elsewhere was not for good cause attributable to the employer.

Mr. Nabb did not intend to leave Gallon, Inc. until he had secured other employment. He obtained employment with Goering Plumbing before he left Gallon, Inc. The administrative law judge concludes, therefore, that he left in good faith for the purpose of accepting work elsewhere. Because he had performed services in the new employment when he filed his claim for job insurance benefits effective October 15, 2006, he is entitled to benefits pursuant to Iowa Code section 96.5(1)a. Benefits paid to Mr. Naab as a result of the decision herein shall not be charged to Gallon, Inc.

DECISION:

The representative's decision dated November 20, 2006, reference 02, is hereby modified. Mr. Naab left his employment with Gallon, Inc. in good faith to accept other employment and has performed services in the new employment. Benefits are allowed effective October 15, 2006, provided he satisfies all other conditions of eligibility, but shall not be charged to Gallon, Inc.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw