

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON G MORRIS
Claimant

APPEAL NO. 10A-UI-16066-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-LERT
Employer

OC: 04/05/09
Claimant: Appellant (1)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.6-2 – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 26, 2010 determination (reference 09) that disqualified him from receiving benefits and held the employer's account exempt from charge. The claimant participated the hearing. Dawn Severs, the administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits as of April 4, 2010.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer on February 23, 2010. When the claimant accepted the job, he understood the job was located in Cedar Rapids and he would have to commute or stay in Cedar Rapids during the week, since he lived in Fort Dodge.

The claimant liked his job, but he had transportation problems. It was also financially difficult for him to commute, and working in Cedar Rapids put a strain on his family life. When the claimant experienced transportation problems, he resigned. The claimant resigned as of April 2, 2010. When the claimant resigned, his job was not in jeopardy and there was continuing work for him to do.

The claimant reopened his claim for benefits during the week of March 28, 2010. On May 26, 2010, a representative's determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving unemployment insurance benefits as of April 4, 2010. The determination also informed the parties the determination was final unless an appeal was filed or postmarked on or before June 5, 2010.

The claimant did not receive the representative's May 26, 2010 determination. The first time he learned about the disqualifying May 26 determination was after he received an overpayment determination and asked his local representative why he was being held overpaid. The overpayment decision was mailed to the claimant on November 16, 2010. He filed his appeal on November 22, 2010.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the June 5, 2010 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file 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 evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal because he did not receive the May 26 determination.

The claimant's failure to file a timely appeal was due to a delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses his delay in filing an appeal. The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant quits without good when he leaves because of transportation issues. 871 IAC 24.25(1). Since the claimant knew the job was in Cedar Rapids when he accepted the job and he would either have to commute or stay in Cedar Rapids during the week, the lack of transportation does not establish reasons that qualify the claimant to receive benefits. Therefore, as of April 4, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's May 26, 2010 determination (reference 09) is affirmed. The claimant did not file a timely appeal, but he established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of his appeal. The claimant voluntarily quit his employment for compelling personal reasons. The claimant's reasons for quitting do not, however, qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of April 4, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw