

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COREY A LEWIS
Claimant

APPEAL NO. 06A-UI-11574-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

**OC: 10/22/06 R: 12
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Corey Lewis filed an appeal from a representative's decision dated November 9, 2006, reference 01, which denied benefits based on his separation from Seventh Avenue, Inc. After due notice was issued, a hearing was held by telephone on December 18, 2006. Mr. Lewis participated personally. The employer participated by Lynn Rankin, Assistant Human Resources Manager.

ISSUE:

At issue in this matter is whether Mr. Lewis' appeal should be deemed timely filed 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. Lewis at his address of record on November 9, 2006. He did not receive the decision and did not learn of the disqualification until he made contact with his local office on or about December 3, 2006. His appeal was filed in the local office that same day.

Mr. Lewis began working for Seventh Avenue, Inc. on September 19, 2005 as a full-time inspector. He last performed services on January 27, 2006. He then began a leave of absence due to the death of his son. On February 2, Mr. Lewis was arrested and confined to jail because of a probation violation. The employer was notified of his incarceration on February 6 but was not told how long he anticipated being in jail. When the employer had not heard further from him, he was removed from payroll as of March 14, 2006. Mr. Lewis was released from jail on October 10, 2006.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether Mr. Lewis' appeal should be considered timely filed as required by Iowa Code section 96.6(2). He did not receive the disqualifying decision in the mail. He

immediately filed an appeal when he learned of the decision from his local office. For the above reasons, the appeal filed on December 3, 2006 shall be deemed timely filed.

The next issue is whether Mr. Lewis' separation constituted a disqualifying event. He initially left the employment on bereavement leave due to a death in the family. However, his continued absence was due to the fact that he was in jail. He was gone from work for over eight months. Had it not been for his incarceration, he presumably would have returned to work within a reasonable amount of time following the death of his son. The administrative law judge concludes that Mr. Lewis' separation was due to his incarceration.

An individual who leaves work because he is in jail is presumed to have left employment for no good cause attributable to the employer. See 871 IAC 24.25(16). Because Mr. Lewis' separation was not for any good cause attributable to the employer, he is not entitled to job insurance benefits.

DECISION:

The representative's decision dated November 9, 2006, reference 01, is hereby affirmed. Mr. Lewis left his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css