

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY B JACK
Claimant

APPEAL NO. 12A-UI-07842-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLYMPIC STEEL IOWA INC
Employer

OC: 05/27/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 18, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 17, 2012. The claimant did participate. The employer did participate through Johanna Mahoney, Human Resources Representative. Exhibit A was admitted to the record.

ISSUE:

The issue is whether the appeal is timely. The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last-known address of record on June 18, 2012. Claimant did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 28, 2012. The appeal was filed June 25, 2012, which is before the date noticed on the disqualification decision. The post office did not post the letter immediately because it was mailed from a small town.

Claimant quit to move to a new locality to care for his sick mother. To date of hearing claimant has not resolved the situation so that he can return and ask for his job back.

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 failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to error delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Claimant quit so that he could care for a family member. Claimant is still caring for the family member. Claimant has not been able to return to employer to ask for his job back after resolving the family health issue. This is a quit without good cause attributable to employer. Benefits withheld.

DECISION:

The June 18, 2012, reference 01, decision is affirmed. The appeal in this case was timely. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs