

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT D GILBERT
Claimant

APPEAL NO. 15A-UI-10217-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TECHNICAL SPECIALTY SYSTEMS CORP
Employer

OC: 11/23/14
Claimant: Appellant (2)

Section 96.5-1 – Leaving Employment/Layoff
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Robert Gilbert, the claimant, filed an appeal from a representative's unemployment decision dated June 30, 2015, reference 03, which denied unemployment insurance benefits finding that the claimant voluntarily quit work on July 4, 2015 to accept other employment that did not materialize. After due notice, a telephone hearing was held on September 24, 2015. Mr. Gilbert participated personally. Participating as a witness for the claimant was Mr. Leonard Berdict, Claimant's landlord. The employer participated by Mr. Rob Cornthaite, Company President.

ISSUE:

The issues are whether the claimant's appeal filed in this matter should be considered timely and whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's address of record on June 30, 2015 but was not received by the claimant until shortly before August 9, 2015 when his previous landlord discovered undelivered mail in the apartment where Mr. Gilbert had previously lived. Mr. Gilbert had moved to a different address shortly before the June 30, 2015, reference 03, decision was mailed to him, and Mr. Gilbert had completed a change of address procedure with the U.S. Postal Service, however, not all of the mail delivered to Mr. Gilbert's previous address had been forwarded to him by the U.S. Postal Service. After finding the adjudicator's determination in the undelivered mail, Mr. Gilbert contacted Iowa Workforce Development and filed an appeal with the Appeals Bureau effective June 9, 2015.

Mr. Gilbert was employed by Technical Specialty Systems Corp. from March 2014 until January 5, 2015 when he was laid off by the company because his seasonal work had ended.

Mr. Gilbert intended to return to Technical Specialty Systems Corp. when work resumed in the spring, however, he later accepted full-time employment with Schoonover Tuck Pointing Company on June 30, 2015. Mr. Gilbert remains employed with Schoonover Tuck Pointing Company at the time of hearing.

The company president, Mr. Cornthaite confirms that Mr. Gilbert's separation from employment took place on January 5, 2015 when he was laid off from his seasonal work with the company.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.35(1) provides:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

a. If transmitted via the United States postal service or its successor, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service or its successor, on the date it is received by the department.

The administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any agency error or misinformation but due to the delay or other action by the U.S. Postal Service pursuant to 871 IAC 24.35(2). Good cause for late filing has been established.

The next question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause that was attributable to the employer. It does. The record in this matter clearly establishes that Mr. Gilbert was laid off from work by Technical Specialty Systems Corp. on January 5, 2015 when there was no further seasonal work for him with the company. The claimant did not leave employment at that time to seek or accept other work. After being laid off for a substantial period of time, Mr. Gilbert was offered new work with a different employer and accepted it. Mr. Gilbert continues to be employed by the Schoonover Tuck Pointing Company at the time of hearing.

Because the claimant's separation from employment was with good cause attributable to the employer, claimant is not subject to a benefit disqualification. Claimant is eligible to receive unemployment insurance benefits for the weeks claimed, provided that he meets all other eligibility requirements of Iowa law. The employer is chargeable for benefits paid to Mr. Gilbert for the weeks prior to Mr. Gilbert accepting new employment.

DECISION:

The representative's decision dated June 30, 2015, reference 03, is reversed. Claimant was laid off due to lack of work under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs