

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERTO CRESPO ALFALLA
Claimant

APPEAL NO: 17A-UI-10873-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRAND ENERGY SOLUTIONS LLC
Employer

OC: 03/26/17
Claimant: Appellant (4)

Section 96.5-1 a – Voluntary Leaving – Other Employment
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 12, 2017, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 9, 2017. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as is required by the hearing notice. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether he voluntarily left his employment to accept employment elsewhere.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on October 12, 2017. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 22, 2017. That date fell on a Sunday so the appeal was due October 23, 2017. The appeal was not filed until October 24, 2017, which is after the date noticed on the disqualification decision. The claimant was working out of state and did not have an opportunity to file an appeal prior to October 24, 2017. The administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time installer for Brand Energy Solutions from July 8, 2017 to approximately September 15, 2017. Continued work was available. The claimant left employment with Brand Energy Solutions to accept other employment at Zachry and performed services for that employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment to accept employment elsewhere.

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of Brand Energy Solutions shall not be charged.

DECISION:

The October 12, 2017, reference 04, decision is modified in favor of the appellant. The claimant's appeal is timely. The claimant voluntarily left his employment in order to accept other employment. Benefits are allowed provided the claimant is otherwise eligible. The account of this employer shall not be charged.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs