

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KHAALIS F GOOCH
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL 15A-UI-11946-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/27/15
Claimant: Appellant (4)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 16, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 5, 2015. Claimant participated. Employer participated through human resource specialist, Sandy Matt. Department's Exhibit D-1 was admitted into the record with no objection.

ISSUES:

Is the appeal timely?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an over-the-road truck driver from October 13, 2004, and was separated from employment on May 6, 2015, when he quit to transfer to another division (CRST Flatbed Regional Inc).

Claimant started with the employer on October 13, 2004. The employer is a division of CRST International. Claimant's last day with the employer was on May 6, 2014. Claimant left the employer to transfer to another division, CRST Flatbed Regional Inc. CRST Flatbed Regional Inc. is another division of CRST International. Claimant performed services for CRST Flatbed Regional Inc.

An ineligibility unemployment insurance decision was mailed to the claimant's last-known address of record on October 16, 2015. Claimant received the decision before October 26, 2015, within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 26, 2015. The appeal was not filed until October 27, 2015, which is after the date noticed on the unemployment insurance decision. Claimant also received a decision during this same time frame regarding his separation from

CRST Flatbed Regional Inc. Both decisions had to be appealed on or before October 26, 2015. Claimant timely appealed the CRST Flatbed Regional Inc. Claimant did not realize he needed to file two appeals when he was working for the same parent company, just two different divisions. Department Exhibit D-1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is considered timely.

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.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that although claimant's failure to follow the clear written instructions to file a timely appeal within the

time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2), claimant did appeal the other decision within a timely manner. Claimant did not realize he needed to file two appeals when he was working for the same parent company, just two different divisions. Department Exhibit D-1. Claimant's decision not to specifically list both decisions is reasonable given the circumstances (both decisions gave the same reason and dates for separation). Therefore, the administrative law judge concludes that any error in timely filing this appeal was reasonable and thus the appeal will be considered timely filed.

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

Iowa Code § 96.5-1-a 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:

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.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

On May 6, 2014, claimant transferred divisions from the employer to CRST Flatbed Regional Inc. 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 (CRST Flatbed Regional Inc.) and did perform services for the subsequent employment (CRST Flatbed Regional Inc.) Accordingly, benefits are allowed and the account of the employer (CRST VAN EXPEDITED INC (039128-000)) shall not be charged.

DECISION:

The appeal of the October 16, 2015, (reference 01) unemployment insurance decision is considered timely filed.

The October 16, 2015, (reference 01) decision is modified in favor of the appellant. The claimant voluntarily left the employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 039128-000) shall not be charged.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs